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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 02 अप्रैल, 2026 / 12 चैत्र, 1948

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171 002, the 16th January, 2026

No: LEP-E/1/2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of

the following cases announced by the **Presiding Judge, Labour Court-**cum**-Industrial Tribunal, Dharamshala H.P.** on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* **"e-Gazette":—**

Sl. No.	Ref./ No.	Petitioner	Respondent	Date of Award/Order
1.	81/23	Sunil Kumar	Principal Dr. RPGMC, Tanda	22-11-2025
2.	82/23	Sandeep Kumar	-Do-	22-11-2025
3.	83/23	Kamal Kumar	-Do-	22-11-2025
4.	88/23	Pavneesh Kumar	-Do-	22-11-2025
5.	36/21	Raj Kumar	M/s New Prem Bus Service	26-11-2025
6.	37/21	Soni Kumar	-Do-	-Do-
7.	38/21	Rakesh Kumar	-Do-	-Do-
8.	40/21	Raj Kumar	-Do-	-Do-
9.	42/21	Chain Singh	-Do-	-Do-
10.	43/21	Sourav Sharma	-Do-	-Do-
11.	44/21	Yash Pal Sharma	-Do-	-Do-
12.	45/21	GulshanWalia	-Do-	-Do-
13.	94/21	Jagdeep Chand	-Do-	-Do-
14.	95/21	Madan Lal	-Do-	-Do-
15.	107/21	Sanjay Kumar Mishra	-Do-	-Do-
16.	96/21	Ashok Kumar	-Do-	-Do-
17.	97/21	Gopal Krishan	-Do-	-Do-
18.	41/21	Vikram Singh	-Do-	27-11-2025
19.	41/17	Babu Ram	The D.F.O.	27-11-2025
20.	76/23	Rohit Sharma	M/S Stanford Lab. Pvt. Ltd. & Otheres	29-11-2025

By order,

Sd/-
PRIYANKA BASU INGTY, IAS
Secretary (Lab. Emp. & O.P.).

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Reference No. : 81/2023

Date of Institution : 12-9-2023

Date of Decision : 22-11-2025

Shri Sunil Kumar s/o Shri Bhim Sain, r/o Village Laher, P.O. Ansui, Tehsil Shahpur, District Kangra, H.P. ..*Petitioner.*

Versus

1. The Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer).

2. The Chairman-*cum*-Managing Director, Himachal Pradesh Ex-Servicemen Corporation,(An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sumit Chaudhary, Ld. Adv.

For Respondent No.1 : Sh. B.C. Katoch, Ld. ADA

For Respondent No.2 : Sh. Ankur Soni, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

*"Whether the termination of services of Shri Sunil Kumar s/o Shri Bhim Sain, r/o Village Laher, P.O. Ansui, Tehsil Shahpur, District Kangra, H.P. by (i) the Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer) (ii) the Chairman-*cum-*Managing Director, Himachal Pradesh Ex-Servicemen Corporation, (An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) w.e.f. 16-04-2022 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"*

2. The brief facts as stated in the claim petition are that the services of the petitioner were appointed by the Chairman-*cum*-Managing Director, Himachal Ex-Servicemen Corporation *i.e.* respondent no.2 in the capacity of security guard w.e.f. 2.11.2019 and after completion of all formalities his (petitioner's) service were deputed to the office of the Principal/Senior Medical Superintendent Dr. Rajinder Prasad Government Medical College, Tanda, *i.e.* respondent no.1 and as such petitioner had continued to discharge his duties under control and supervision of respondent no.1 till 15.4.2022. It is asserted that in the month of January/February, 2022 the security guards of respondent no.1 had formed the association/union in the name and style of Medical College Tanda Sauraksa Karamchari Union and *vide* resolution dated 21.3.2021 the President/Secretary of the union had served demand notice to respondents no.1 and 2 under Section 2-K of the Industrial Disputes Act, 1947 wherein seven different types of demands were raised by the union and copy of the same as forwarded to Labour-cum-Conciliation Officer Kangra at Dharamshala for necessary action. On 24.3.2022 the president/secretary of union has received letter from the office of Labour Officer Dharamshala with regard to demand notice 21.3.2022. It is asserted that the petitioner had discharged his duties w.e.f. 2.11.2019 upto 15.4.2022 continuously with the management of respondent no.1 and thereafter respondent no.2 has not allowed the duties w.e.f. 16.4.2022 which means that termination of the services of the petitioner was without complying with the provisions of the Industrial Disputes Act, 1947. While terminating the services of the petitioner respondents had not served any charge-sheet as per HP Industrial Employment Standing Order Act, 1946 as well as no inquiry was conducted against the petitioner. No one month's notice under Section 25-F (a) and no retrenchment compensation under Section 25-F (b) was given to the petitioner. No

information with regard termination of the petitioner was sent to the Labour Inspector Dharamshala which was mandatory as envisaged under Section 25-F (c) of the Industrial Disputes Act. It is asserted that the petitioner had completed more than 240 days in each and every calendar year as well as 12 calendar months preceding from the date of termination. It is alleged that the respondents had violated the provisions of Section 25 Clause H of the Industrial Disputes Act. On 16.4.2022 the respondents had not allowed the services of 154 guards in the premises of the respondent no.1 however the services of 145 security guards were again reinstated by the respondents except nine union office bearers and they are all working with the respondent no.1. It is asserted that the 154 security guards were the members of the union and office bearers of the union i.e. Vivek Pana (President, Sunil Kumar, General Secretary, Sandeep Kumar, Vice President, Atul Kumar, Secretary, Kamal Kumar, Cashier, Bhavdeep Raj and Vinay Kumar, Executive Members of the union were not allowed by the management and services of above said workmen/security guard were terminated by both the managements due to their union activities and it is alleged that the act of management was an unfair labour practice within the meaning of Section 2(A) read with Section 25-T and 25-U read with schedule 5th of the Industrial Disputes Act, 1947. It is asserted that the after reinstatement of 145 security guards the petitioner had also approached the Chairman-cum-Managing Director regarding his reinstatement but of no avail. It is asserted that due to pendency of demand notice dated 21.3.2022 the services of the petitioner were terminated by the department without obtaining permission from labour authority, Dharamshala and violated Section 33(2) (b) of the Industrial Disputes Act. It is asserted that the act of the department to terminate the services of petitioner on 16.4.2022 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. The management deprived the workmen of their fundamental rights under Article 14, 16 and 21 of the Constitution of India. It is asserted that the petitioner/workman is still unemployed and not gainfully employed anywhere from the date of his termination. It is prayed that the termination of the petitioner on dated 16.4.2022 may be revoked and the services of petitioner may be reinstated with full back wages, seniority and continuity along-with all consequential service benefits.

3. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, suppression of material facts, absence of relationship of employer and employee and absence industrial disputes under Section 2(g), 2(k) of the Industrial Disputes Act, petitioner not falling within definition of workman as given under Section 2(s) of the Act and respondent no.1 not an industry under the Industrial Disputes Act, 1947 were raised. On merits, it is asserted that the services of petitioner were appointed by Chairman-cum-Managing Director Himachal Pradesh Ex-Servicemen Corporation Hamirpur i.e. respondent no.2 with the respondent no.2 in the capacity of security guard after completion of all codal formalities. It is mentioned here that respondent no.1 came to know about the termination of the security service contract w.e.f. 15.4.2022 by respondent no.2 when respondent no.1 received notice of termination of security services contract vide its letter dated 11.3.2022. It is asserted that the respondent no.1 was not involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner. It is denied that respondent no.1 had terminated the services of petitioner. It is asserted that the services of petitioner were under control and supervision of respondent no.2 through its Assistant Security Guard posted with respondent no.1. It is denied that the services of petitioner were terminated by respondent no.1 however it is alleged that reinstatement of the services of petitioner comes under control and supervision of respondent no.2. It is denied for want of knowledge that the Association/Union in the name and style of Medical College Surksha Karamchari Union was formed in the month of January/February, 2022. However union was formed in the month of December on dated 19.12.2021. It is asserted that union had raised different types of seven demands but the same were not in the purview of respondent no.1 for reason that respondent no.2 raised consolidated monthly bill in the name of respondent no.1 and respondent no.1 made payment to respondent no.2 on the basis of monthly bill submitted by the respondent no.2 and as such respondent no.1 was in no way or manner involved directly or indirectly in the recruitment, selection, engagement or termination

of the petitioner/applicant. The respondent no.1 hired the services from respondent no.2 on consolidated manpower basis but not on man to man basis. It is asserted that respondent no.1 had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 as well as Industrial Disputes (Central Rules) 1957 and under Sections 82 and 83 of H.P. Disputes Act (Rules), 1974. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In reply to the claim petition filed on behalf of respondent no.2 preliminary objections qua maintainability, mis-joinder and non-joinder of necessary parties, claim barred by delay and laches, suppression of material facts and estopple have been raised. On merits, it is asserted that security personnel outsourced through this corporation are barred from forming any union or association. It is asserted that petitioner was engaged as security guard on his request at RPGMC, Tanda initially for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend on his performance, rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. It is asserted that at the time of joining, the petitioner filed an affidavit dated 26.8.2019 duly signed by him with the respondent and as per Clause 2(iv) of the affidavit the petitioner declared '*that I shall not participate in any union activities strikes etc. in case doing so Corporation is free to terminate my services without any notice/warning/enquiry at any time'*. As per Clause 2 (vi) the petitioner declared that '*that in case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex. Servicemen Corporation is free to terminate my services without any notice forthwith'*. It is alleged that the petitioner had breached the conditions of duty sworn in affidavit. It is denied that the services of petitioner were terminated w.e.f. 16.4.2022 on verbal orders without complying with the necessary provisions of the Industrial Disputes Act, 1947. It is further mentioned that the replying respondent is not an industry under the purview of Industrial Disputes Act. It is however mentioned that security service contract of HP Ex-Servicemen Corporation with Dr. RPGMC, Tanda was terminated on 15.4.2022 when security personnel adopted to perform their duties by mutual arrangement without adhering to the eight hours shift against labour law. It is asserted that the act and conduct of petitioner was not as per the norms and rules due to which he was served with the show cause notices dated 11.3.2022. On dated 28.1.2022 the petitioner along-with other security personnel went on strike jeopardized the security of respondent no.1, its staff and patients. It is asserted that letter dated 28.1.2022 was issued by respondent no.2 to the Director, Medical Education & Research Kasumpti, Shimla. It is alleged that the act and conduct of petitioner was far from satisfactory and he was guilty of having breached the declaration made by him by way of duty sworn in affidavit by engaging in union activities. It is asserted that the petitioner had instigated other colleagues (security personnel) and created embarrassing situation at DR. RPGMC, Tanda when third wave of corona pandemic was on peak. It is asserted that fresh contract agreement was exercised with Dr. RPGMC, Tanda for providing security service w.e.f. 26.4.2022 since security services to hospital fall in the preview of essential services. The engagement of four security supervisor, 114 security guards and 42 female security guards made under new contract agreement which was done afresh. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

5. In separate rejoinders preliminary objections raised in reply were denied facts stated in the petition are reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the respondents have illegally terminated services of the petitioner *w.e.f.* 16.4.2022 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as alleged? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether there is no relationship of employer & employee between the petitioner and respondent No.1, as alleged? ..*OPR1.*

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? ..*OPRs.*

6. Whether the petitioner is estopped by his own act and conduct to file the present claim petition? ..*OPRs.*

7. Whether the petition is bad for non-joinder of the necessary parties, as alleged? ..*OPR2.*

Relief.

7. The petitioner in order to prove his case has produced his affidavit Ext.PW1/A wherein he has reiterated the facts as stated in the claim petition. He has also produced on record copy of conciliation failure report Ext. PW1/B, copy of demand notice Ext. PW1/C, copy of authorization letter Ext. PW1/D, copy of notice dated 23.5.2022 Ext. PW1/E, copy of reply dated 6.6.2022 Ext. PW1/F, copy of agreement Ext. PW1/G, copy of resolution dated 19.12.2021 Ext. PW1/H, copy of letter dated 24.9.2021 Ext. PW1/J, copy of notification dated 22.2.2022 Ext.PW1/K, copy of show cause notice dated 15.3.2022 Ext. PW1/L, copy of reply to show cause notice Ext. PW1/M, copy of reply to show cause notice dated 25.4.2022 Ext. PW1/N, copy of reply to demand notice dated nil Ext. PW1/O, copy of office order dated 7.6.2022 Ext. PW1/P and copy of letter dated 31.5.2022 Ext. PW1/Q.

8. Respondent on the other hand has examined Shri Vivek Banyal, Medical Superintendent, DR. RPGMC Kangra at Tanda by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of meeting dated 7.12.2005 Ext. RW1/B, copy of letter dated 8.2.2006 Ext. RW1/C, copy of letter dated 1.7.2003 Ext. RW1/D, copy of letter dated 16.12.2006 Ext. RW1/E, copy of letter dated 19.5.2010 Ext.RW1/F, copy of letter dated 8.6.2010 Ext. RW1/G, copy of letter dated 2.6.2017 Ext. RW1/H, copy of letter dated 13.7.2017 Ext. RW1/J, copy of letter dated 25 June, 2018 Ext. RW1/K, copy of letter dated 28.9.2018 Ext. RW1/L, copy of letter dated 11.5.2021 Ext. RW1/M, copy of letter dated 11.3.2022 Ext. RW1/N, copy of resolution dated 19.12.2021 Ext. RW1/O, copy of letter dated 21.3.2022 Ext. RW1/P, copy of agreement dated 2.1.2007 Ext. RW1/Q, copy of agreement dated 5.5.2022 Ext. RW1/R, copy of agreement dated 4.6.2024 Ext. RW1/S, copy of notice dated 26.3.2022 Ext. RW1/T, copy of notice dated 17.3.2022 Ext. RW1/U, copy of notice dated 16.4.2022 Ext. RW1/V and copy of notice dated 25.4.2022 Ext. RW1/W. Learned Counsel for the respondent no.2 has also produced on record copy of Ex-Serviceman Corporation Act Ext. RW2/A, copy of letter dated 28.1.2022 Ext. RW2/B, copy of letter dated 22.2.2022 Ext. RW2/C, copy of letter dated 11.3.2022 Ext. RW2/D, copy of notice Ext. RW2/E, copy of reply to show cause notice received on 23.3.2022 Ext. RW2/F and closed evidence on behalf of respondent no.2.

9. I have heard the learned Counsel for the petitioner as well as learned Dy. D.A. for respondent no.1 and learned Counsel for respondent no.2 at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

11. It is not disputed that the services of petitioner were engaged as security guard by Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation and deputed with Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda. Petitioner in his affidavit has asserted that he continued to discharge his duties under the control and supervision of Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda till 15.4.2022. RW1 Dr. Vivek Bhanyal has not denied that the services of petitioner were engaged through respondent no.2 but has asserted that respondent no.1 had no concern with the recruitment, selection, engagement or termination of the petitioner and that the services of petitioner were under the supervision and control of Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation. Petitioner in his cross-examination has admitted that he was appointed by respondent no.2. He also stated that his salary was paid by respondent no.2 and he was terminated by respondent no.2. He has clarified that he has no claim against respondent no.1. No oral evidence has been produced on behalf of respondent no.2 in this regard. In view of the statement of petitioner in his cross-examination this court would confine itself to the termination of petitioner by respondent no.2 who was employer of the petitioner.

12. As pleaded by the petitioner that respondents 2 is dealing with outsource of Ex-Servicemen for security duties to the various government institutions and State/Central Government. It is important to peruse the pleadings on behalf of respondent no.2 in the present case wherein it is submitted that petitioner on his request was engaged as security guard for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend upon his performance i.e. rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. Respondent no.2 has also asserted that at the time of joining of petitioner he filed affidavit dated 26.8.2019 duly signed by him and declared that he shall not participate in any union activities strikes etc. In case of doing so corporation is free to terminate his services without any notice, warning, enquiry at any time. It was also alleged that repeated complaints were received from

Principal Employer, Rajender Prasad Government Medical College, Tanda regarding unsatisfactory security services. On 28.1.2022 the petitioner along-with other security personnel went on strike jeopardizing the security service of Rajender Prasad Government Medical College, Tanda, its staff and patients. In this regard letter dated 28.1.2022 was issued to the Director, Medical Education and Research Kasumpti, Shimla by Principal Dr. Rajender Prasad Govt. Medical College. Despite request by the respondent no.2 security personnel did not mend their behaviour hence another letter was issued on 22.2.2022 Ext. PW1/K regarding ensuring proper security services. Subsequently a notice dated 11.3.2022 was displayed in the Notice Board of Dr. Rajender Prasad Government Medical College, Tanda. These circumstances it was clear that the termination of petitioner was on account of termination of contract between respondents. It is also alleged that petitioner instigated other colleagues and created embarrassing situation with respondent no.1 even during wave of corona pandemic and violation of Disaster Management Act, 2005. The petitioner was also served show cause notice on 15th March, 2022 whereby he ignored the charges levelled against him. He opted to serve on outsource basis and this contract with him was terminated on 16.4.2022 on termination of said contract petitioner stood terminated.

13. Pertinent to mention here that no oral evidence in support of these allegation was produced by the respondent no.2. Documents have been duly exhibited before this court. It is pleaded that termination of petitioner was on account of termination of contract period and since the petitioner violated the basic undertaking mentioned in the contract of employent by participating in union activities, strike etc. Respondents has produced on record Ext. RW2/A the Ex-Serviceman Corporation Act , 1979. The agreement/affidavit on behalf of petitioner is Ext. R2/A. Clause (iv) of the said agreement/affidavit reads as follows:—

> "T*hat I shall not participate in any union activities strikes etc. in case doing so corporation is free to terminate my services without any notice/warning /enquiry at any time".*

Clause (vi) of affidavit/agreement also reads as follows:—

> *"In case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex-Servicemen Corporation is free to terminate my services without any notice forthwith".*

14. Ext. RW2/B is the complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the Director, Medical Education & Research regarding formation of union by these security personnel of HP Ex-Servicemen Corporation respondent no.2. Ext. RW2/C is complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the CMD HP Ex-Servicemen Corporation. Subsequent show cause notice to the petitioner is Ext. RW2/C and reply is Ext. R2/B. With regard to the allegations made by the respondents that the petitioner had violated undertaking vide Ext. R2/A, it is pertinent to observe that the said agreement was w.e.f. 2.11.2019 to 1.11.2020. The period of the agreement was for one year which was also extendable from time to time. Respondents have not produced any document to show subsequent extension of the contract on the case file. The Hon'ble Supreme Court in **Damyanti Naranga vs. The Union Of India and Others, 1971 SCR (3) 840** has clearly held that formation of union is legal right and the fundamental right under Article 19 (i) (c) of the Constitution of India.

15. Clause (iv) and Clause (vi) of the agreement Ext. R2/A was hence unconstitutional and violative of fundamental right and principles of natural justice of workman even though show cause notice was issued to the petitioner the termination was essentially on account of no extension of contract between the petitioner and the respondent no.2. As already mentioned that no contract of employer and employee between the petitioner and respondent no.2 or the extension of the original contract for the year 2021 to 2022 has been produced on record to establish that during the period when the alleged show cause notices have been issued to the petitioner he was bound by the

condition of original contract executed between the parties in the year 2019. It is not disputed that prior to 16 April, 2022 the petitioner had continuously worked with respondent no.2 for more than 240 days in each calendar months including the last 12 calendar months of his services. In these circumstances the termination of petitioner by respondent no.2 was illegal due to non compliance of the basic provisions of Section 25 Clause F of the Industrial Disputes Act, 1947.

16. RW1 Dr. Vivek Bhanyal has admitted in his cross-examination that they had entered into the contract with the respondent no.2 for providing services and consequently the petitioner was posted as security guard with them. He has also admitted that the salary of the petitioner was being paid by respondent no.2 and duty roaster was also prepared by the office of respondent no.2. It is important to observe that as per him there was no complaint against the petitioner regarding strike or misconduct. He is unaware of the fact whether the union formed by the petitioner was registered or not. He has also shown his ignorance to the fact that after sometime 145 security guards were revived by respondent no.2 however the petitioner was not kept on work. He has admitted that *vide* letter Ext. PW1/K there is no mention of the name of petitioner.

17. Documents have been produced to indicate that the service agreement between respondents no.1 and 2 ended on 16.4.2022. It is however clear from letter of communication between respondents no.1 and 2 that respondent no.2 was requested to continue the services till new tenders were invited after 15.4.2022 vide Ext. RW1/V. Finally the respondent no.2 was asked to resume the service vide letter dated 23.4.2022 from the Principal, Rajender Prasad Government Medical College Tanda. This implies that there was no dearth of work available with respondent no.2 and the termination of the contract or stoppage of service being provided by respondent no.2 to respondent no.1. It is already mentioned above that in order to support their case no oral evidence has been produced by respondent no.2. Similarly no oral evidence is controvert the allegations made by petitioner to the effect that after termination of the petitioner new hands were employed by the respondents and that the persons junior to the petitioner were retained by respondent no.2. In these circumstances considering the oral and documentary evidence produced before this court it is proved that petitioner's services were illegally terminated on 16.4.2022 by respondent no.2 and respondent no.2 committed violation of the Industrial Disputes Act, 1947 under Sections 25-F, 25-G and 25-H of the Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No. 2

18. It has been proved from the overwhelming evidence while deciding issue no.1 above that the respondents had violated the basic provisions of the Industrial Disputes Act, 1947. Learned Counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., (2013) 10 SCC 324** wherein the Hon'ble Supreme Court has held in paras no.38.1, 38.2 and 38.3 as follows:-

"38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully

employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

19. Learned Counsel for petitioner has submitted that the termination of the petitioner in the present case was illegal and no evidence has been led by the respondents to prove that petitioner was gainfully employed after termination of his services by the respondent no.2. In these circumstances the petitioner should be held entitled for reinstatement along-with back wages. I have carefully considered the facts and circumstances of the case. It is true that the termination was in violation of the basic provisions of the Industrial Disputes Act. The communication letters which have been produced on the case file indicate that there was strike and interruption of essential service during corona pandemic regarding which the complaints were made not particularly against the petitioner but number of workers who were members of the union. This consequence led to the termination which was not made in accordance with law. In these circumstances respondent No.2 is directed to reinstate the service of petitioner forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. This issue no.2 is decided accordingly in the favour of petitioner.

Issues No. 3, 5, 6 and 7

20. The onus of proving these issues was on the respondents. The respondents have not been able to justify the termination of the petitioner in accordance with the provisions of the Industrial Disputes Act. There is nothing on record to show that petitioner has suppressed the material facts which would disentitle him or which would estopped from filing the present claim against the respondents. Similarly the petition is not bad for non-joinder of the necessary parties. Hence all these issues are decided in the favour of the petitioner.

Issue No. 4

21. It has been observed in detail while deciding issue no.1 above that the petitioner himself has asserted that his employer was respondent no.2. There is no evidence to show a direct employer and employee relationship between the respondent no.1 and petitioner hence the issue no.4 is decided in the favour of respondent no.1.

RELIEF

22. In view of my discussion on the issues no. 1 to 7 above, the claim petition succeeds and is partly allowed. The petitioner is entitled for reinstatement forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 22nd day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 82/2023

Date of Institution : 12-9-2023

Date of Decision : 22-11-2025

Shri Sandeep Kumar s/o Shri Dharub Katoch, r/o Village Dhobkhal, P.O. Pathiar, Tehsil Nagrota Bagwan, District Kangra, H.P. ..*Petitioner.*

Versus

1. The Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer).

2. The Chairman-cum-Managing Director, Himachal Pradesh Ex-Servicemen Corporation,(An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sumit Chaudhary, Ld. Adv.

For Respondent No. 1 : Sh. B.C. Katoch, Ld. ADA

For Respondent No. 2 : Sh. Ankur Soni, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Sandeep Kumar s/o Shri Dharub Katoch, r/o Village Dhobkhal, P.O. Pathiar, Tehsil Nagrota Bagwan, District Kangra, H.P. by (i) the Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer) (ii) the Chairman-cum-Managing Director, Himachal Pradesh Ex-Servicemen Corporation, (An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) w.e.f. 16-04-2022 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were appointed by the Chairman cum Managing Director, Himachal Ex-Servicemen Corporation i.e. respondent no.2 in the capacity of security guard w.e.f. 2.1.2019 and after completion of all formalities his (petitioner's) service were deputed to the office of the Principal/Senior Medical Superintendent Dr. Rajinder Prasad Government Medical College, Tanda, i.e. respondent no.1 and as such petitioner had continued to discharge his duties under control and supervision of respondent no.1 till 15.4.2022. It is asserted that in the month of January/February, 2022 the security guards of respondent no.1 had formed the association/union in the name and style of Medical College Tanda Sauraksa Karamchari Union and vide resolution dated 21.3.2022 the President/Secretary of the union had served demand notice to respondents no.1 and 2 under Section 2-K of the Industrial Disputes Act, 1947 wherein seven different types of demands were raised by the union and copy of the same as forwarded to Labour-cum-Conciliation Officer Kangra at Dharamshala for necessary action. On 24.3.2022 the president/secretary of union has received letter from the office of Labour Officer Dharamshala with regard to demand notice 21.3.2022. It is asserted that the petitioner had discharged his duties w.e.f. 2.1.2019 upto 15.4.2022 continuously with the management of respondent no.1 and thereafter respondent no.2 has not allowed the duties w.e.f. 16.4.2022 which means that termination of the services of the petitioner was without complying with the provisions of the Industrial Disputes Act, 1947. While terminating the services of the petitioner respondents had not served any charge-sheet as per HP Industrial Employment Standing Order Act, 1946 as well as no inquiry was conducted against the petitioner. No one month's notice under Section 25-F (a) and no retrenchment compensation under Section 25-F (b) was given to the petitioner. No information with regard termination of the petitioner was sent to the Labour Inspector Dharamshala which was mandatory as envisaged under Section 25-F (c) of the Industrial Disputes Act. It is asserted that the petitioner had completed more than 240 days in each and every calendar year as well as 12 calendar months preceding from the date of termination. It is alleged that the respondents had violated the provisions of Section 25 Clause H of the Industrial Disputes Act. On 16.4.2022 the respondents had not allowed the services of 154 guards in the premises of the respondent no.1 however the services of 145 security guards were again reinstated by the respondents except nine union office bearers and they are all working with the respondent no.1. It is asserted that the 154 security guards were the members of the union and office bearers of the union i.e. Vivek Pana (President, Sunil Kumar, General Secretary, Sandeep Kumar, Vice President, Atul Kumar, Secretary, Kamal Kumar, Cashier, Bhavdeep Raj and Vinay Kumar, Executive Members of the union were not allowed by the management and services of above said workmen/security guard were terminated by both the managements due to their union activities and it is alleged that the act of management was an unfair labour practice within the meaning of Section 2(A) read with Section 25-T and 25-U read with schedule 5th of the Industrial Disputes Act, 1947. It is asserted that the after reinstatement of 145 security guards the petitioner had also approached the Chairman-cum-Managing Director regarding his reinstatement but of no avail. It is asserted that due to pendency of demand notice dated 21.3.2022 the services of the petitioner were terminated by the department without obtaining permission from labour authority, Dharamshala and violated Section 33(2) (b) of the Industrial Disputes Act. It is asserted that the act of the department to terminate the services of petitioner on 16.4.2022 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. The management deprived the workmen of their fundamental rights under Article 14, 16 and 21 of the Constitution of India. It is asserted that the petitioner/workman is still unemployed and not gainfully employed anywhere from the date of his termination. It is prayed that the termination of the petitioner on dated 16.4.2022 may be revoked and the services of petitioner may be reinstated with full back wages, seniority and continuity along-with all consequential service benefits.

3. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, suppression of material facts, absence of relationship of employer and employee and absence industrial disputes under Section 2(g), 2(k) of the Industrial Disputes Act, petitioner

not falling within definition of workman as given under Section 2(s) of the Act and respondent no.1 not an industry under the Industrial Disputes Act, 1947 were raised. On merits, it is asserted that the services of petitioner were appointed by Chairman-cum-Managing Director Himachal Pradesh Ex-Servicemen Corporation Hamirpur i.e. respondent no.2 with the respondent no.2 in the capacity of security guard after completion of all codal formalities. It is mentioned here that respondent no.1 came to know about the termination of the security service contract w.e.f. 15.4.2022 by respondent no.2 when respondent no.1 received notice of termination of security services contract vide its letter dated 11.3.2022. It is asserted that the respondent no.1 was not involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner. It is denied that respondent no.1 had terminated the services of petitioner. It is asserted that the services of petitioner were under control and supervision of respondent no.2 through its Assistant Security Guard posted with respondent no.1. It is denied that the services of petitioner were terminated by respondent no.1 however it is alleged that reinstatement of the services of petitioner comes under control and supervision of respondent no.2. It is denied for want of knowledge that the Association/Union in the name and style of Medical College Surksha Karamchari Union was formed in the month of January/February, 2022. However union was formed in the month of December on dated 19.12.2021. It is asserted that union had raised different types of seven demands but the same were not in the purview of respondent no.1 for reason that respondent no.2 raised consolidated monthly bill in the name of respondentno.1 and respondent no.1 made payment to respondent no.2 on the basis of monthly bill submitted by the respondent no.2 and as such respondent no.1 was in no way or manner involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner/applicant. The respondent no.1 hired the services from respondent no.2 on consolidated manpower basis but not on man to man basis. It is asserted that respondent no.1 had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 as well as Industrial Disputes (Central Rules) 1957 and under Sections 82 and 83 of H.P. Disputes Act (Rules), 1974. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In reply to the claim petition filed on behalf of respondent no.2 preliminary objections qua maintainability, mis-joinder and non-joinder of necessary parties, claim barred by delay and laches, suppression of material facts and estopple have been raised. On merits, it is asserted that security personnel outsourced through this corporation are barred from forming any union or association. It is asserted that petitioner was engaged as security guard on his request at RPGMC, Tanda initially for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend on his performance, rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. It is asserted that at the time of joining, the petitioner filed an affidavit dated 15.12.2018 duly signed by him with the respondent and as per Clause 2(iv) of the affidavit the petitioner declared '*that I shall not participate in any union activities strikes etc. in case doing so Corporation is free to terminate my services without any notice/warning/enquiry at any time'*. As per Clause 2 (vi) the petitioner declared that '*that in case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex. Servicemen Corporation is free to terminate my services without any notice forthwith'*. It is alleged that the petitioner had breached the conditions of duty sworn in affidavit. It is denied that the services of petitioner were terminated w.e.f. 16.4.2022 on verbal orders without complying with the necessary provisions of the Industrial Disputes Act, 1947. It is further mentioned that the replying respondent is not an industry under the purview of Industrial Disputes Act. It is however mentioned that security service contract of HP Ex-Servicemen Corporation with Dr. RPGMC, Tanda was terminated on 15.4.2022 when security personnel adopted to perform their duties by mutual arrangement without adhering to the eight hours shift against labour law. It is asserted that the act and conduct of petitioner was not as per the

norms and rules due to which he was served with the show cause notices dated 11.3.2022. On dated 28.1.2022 the petitioner along-with other security personnel went on strike jeopardized the security of respondent no.1, its staff and patients. It is asserted that letter dated 28.1.2022 was issued by respondent no.2 to the Director, Medical Education & Research Kasumpti, Shimla. It is alleged that the act and conduct of petitioner was far from satisfactory and he was guilty of having breached the declaration made by him by way of duty sworn in affidavit by engaging in union activities. It is asserted that the petitioner had instigated other colleagues (security personnel) and created embarrassing situation at DR. RPGMC, Tanda when third wave of corona pandemic was on peak. It is asserted that fresh contract agreement was exercised with Dr. RPGMC, Tanda for providing security service w.e.f. 26.4.2022 since security services to hospital fall in the preview of essential services. The engagement of four security supervisor, 114 security guards and 42 female security guards made under new contract agreement which was done afresh. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

5. In separate rejoinders preliminary objections raised in reply were denied facts stated in the petition are reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the respondents have illegally terminated services of the petitioner w.e.f. 16.4.2022 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as alleged? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether there is no relationship of employer & employee between the petitioner and respondent No.1, as alleged? ..*OPR1.*

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? ..*OPRs.*

6. Whether the petitioner is estopped by his own act and conduct to file the present claim petition? ..*OPRs.*

7. Whether the petition is bad for non-joinder of the necessary parties, as alleged? OPR2

Relief.

7. The petitioner in order to prove his case has produced his affidavit Ext.PW1/A wherein he has reiterated the facts as stated in the claim petition. He has also produced on record copy of conciliation failure report Ext. PW1/B, copy of demand notice Ext. PW1/C, copy of letter dated 23.5.2022 Ext. PW1/D, copy of reply dated 6.6.2022 Ext. PW1/E, copy of agreement Ext. PW1/F, copy of show cause notice dated 15.3.2022 Ext. PW1/G, copy of reply dated 23.3.2022 Ext. PW1/H, copy of reply to show cause notice dated 25.4.2022 Ext. PW1/J, copy of show cause notice dated 25.3.2021 Ext. PW1/K, copy of letter Ext. PW1/L, copy of resolution dated 19.12.2021 Ext. PW1/M, copy of letter dated 24.9.2021 Ext. PW1/N and copy of notification dated 22.2.2022 Ext. PW1/O.

8. Respondent on the other hand has examined Shri Vivek Banyal, Medical Superintendent, DR. RPGMC Kangra at Tanda by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of meeting dated 7.12.2005 Ext. RW1/B, copy of letter dated 8.2.2006 Ext. RW1/C, copy of letter dated 1.7.2003 Ext. RW1/D, copy of letter dated 16.12.2006 Ext. RW1/E, copy of letter dated 19.5.2010 Ext.RW1/F, copy of letter dated 8.6.2010 Ext. RW1/G, copy of letter dated 2.6.2017 Ext. RW1/H, copy of letter dated 13.7.2017 Ext. RW1/J, copy of letter dated 25 June, 2018 Ext. RW1/K, copy of letter dated 28.9.2018 Ext. RW1/L, copy of letter dated 11.5.2021 Ext. RW1/M, copy of agreement dated 2.1.2007 Ext. RW1/N, copy of letter dated 26.3.2022 Ext. RW1/O, copy of notice dated 20.3.2022 Ext.RW1/P, copy of letter dated 16.4.2022 Ext. RW1/Q, copy of notice dated 21.4.2022 Ext. RW1/R, copy of letter dated 23.4.2022 Ext. RW1/S and copy of bills Ext. RW1/T. Learned Counsel for the respondent no.2 has also produced on record copy of Ex-Serviceman Corporation Act Ext. RW2/A, copy of show cause notice dated 25.3.2021 Ext.RW2/C, copy of warning order dated 20.4.2021 Ext.RW2/D, copy of letter dated 28.1.2022 Ext.RW2/E, copy of letter dated 22.2.2022 Ext.RW2/F, copy of letter dated 11.3.2022 Ext.RW2/G, copy of notice Ext.RW2/H, copy of reply to show cause notice dated 25.4.2022 Ext.RW2/J, copy of show notice dated 23.3.2022 Ext.RW2/L, copy of letter dated 1.1.2022 Ext.RW2/M and copy of letter dated 28.1.2022 Ext.RW2/N and closed evidence on behalf of respondent no.2.

9. I have heard the learned Counsel for the petitioner as well as learned Dy. D.A. for respondent no.1 and learned Counsel for respondent no.2 at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. It is not disputed that the services of petitioner were engaged as security guard by Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation and deputed with Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda. Petitioner in his affidavit has asserted that he continued to discharge his duties under the control and supervision of Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda till 15.4.2022. RW1 Dr. Vivek Bhanyal has not denied that

the services of petitioner were engaged through respondent no.2 but has asserted that respondent no.1 had no concern with the recruitment, selection, engagement or termination of the petitioner and that the services of petitioner were under the supervision and control of Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation. Petitioner in his cross-examination has admitted that he was appointed by respondent no.2. He also stated that his salary was paid by respondent no.2 and he was terminated by respondent no.2. He has clarified that he has no claim against respondent no.1. No oral evidence has been produced on behalf of respondent no.2 in this regard. In view of the statement of petitioner in his cross-examination this court would confine itself to the termination of petitioner by respondent no.2 who was employer of the petitioner.

12. As pleaded by the petitioner that respondents 2 is dealing with outsource of Ex-Servicemen for security duties to the various government institutions and State/Central Government. It is important to peruse the pleadings on behalf of respondent no.2 in the present case wherein it is submitted that petitioner on his request was engaged as security guard for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend upon his performance i.e. rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. Respondent no.2 has also asserted that at the time of joining of petitioner he filed affidavit dated 15.12.2018 duly signed by him and declared that he shall not participate in any union activities strikes etc. In case of doing so corporation is free to terminate his services without any notice, warning, enquiry at any time. It was also alleged that repeated complaints were received from Principal Employer, Rajender Prasad Government Medical College, Tanda regarding unsatisfactory security services. On 28.1.2022 the petitioner along-with other security personnel went on strike jeopardizing the security service of Rajender Prasad Government Medical College, Tanda, its staff and patients. In this regard letter dated 28.1.2022 was issued to the Director, Medical Education and Research Kasumpti, Shimla by Principal Dr. Rajender Prasad Govt. Medical College. Despite request by the respondent no.2 security personnel did not mend their behaviour hence another letter was issued on 22.2.2022 Ext. PW1/K regarding ensuring proper security services. Subsequently a notice dated 11.3.2022 was displayed in the Notice Board of Dr. Rajender Prasad Government Medical College, Tanda. These circumstances it was clear that the termination of petitioner was on account of termination of contract between respondents. It is also alleged that petitioner instigated other colleagues and created embarrassing situation with respondent no.1 even during wave of corona pandemic and violation of Disaster Management Act, 2005. The petitioner was also served show cause notice on 15th March, 2022 whereby he ignored the charges levelled against him. He opted to serve on outsource basis and this contract with him was terminated on 16.4.2022 on termination of said contract petitioner stood terminated.

13. Pertinent to mention here that no oral evidence in support of these allegation was produced by the respondent no.2. Documents have been duly exhibited before this court. It is pleaded that termination of petitioner was on account of termination of contract period and since the petitioner violated the basic undertaking mentioned in the contract of employent by participating in union activities, strike etc. Respondents has produced on record Ext. RW2/A the Ex-Serviceman Corporation Act , 1979. The agreement/affidavit on behalf of petitioner is Ext. RW2/B. Clause (d) of the said agreement/affidavit reads as follows:—

> *"That I shall not participate in any union activities strikes etc. in case doing so corporation is free to terminate my services without any notice/warning /enquiry at any time".*

Clause (f) of affidavit/agreement also reads as follows:—

> *"In case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex-Servicemen Corporation is free to terminate my services without any notice forthwith".*

14. Ext. RW2/B is the complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the Director, Medical Education & Research regarding formation of union by these security personnel of HP Ex-Servicemen Corporation respondent no.2. Ext. RW2/C is complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the CMD HP Ex-Servicemen Corporation. Subsequent show cause notice to the petitioner is Ext. RW2/C and reply is Ext. R2/B. With regard to the allegations made by the respondents that the petitioner had violated undertaking vide Ext. RW2/B, it is pertinent to observe that the said agreement does not bear any date of execution and the stamp papers appears to have been purchased in the year 2018. As per pleadings of respondent no.2 the agreement is dated 15.12.2018. The period of agreement was for 10-12 months subject to extension from time to time. Respondents have not produced any document to show subsequent extension of the contract on the case file. The Hon'ble Supreme Court in **Damyanti Naranga vs. The Union Of India and Others, 1971 SCR (3) 840** has clearly held that formation of union is legal right and the fundamental right under Article 19 (i) (c) of the Constitution of India.

15. Clause (iv) and Clause (vi) of the agreement Ext. R2/A was hence unconstitutional and violative of fundamental right and principles of natural justice of workman even though show cause notice was issued to the petitioner the termination was essentially on account of no extension of contract between the petitioner and the respondent no.2. As already mentioned that no contract of employer and employee between the petitioner and respondent no.2 or the extension of the original contract for the year 2021 to 2022 has been produced on record to establish that during the period when the alleged show cause notices have been issued to the petitioner he was bound by the condition of original contract executed between the parties in the year 2019. It is not disputed that prior to 16 April, 2022 the petitioner had continuously worked with respondent no.2 for more than 240 days in each calendar months including the last 12 calendar months of his services. In these circumstances the termination of petitioner by respondent no.2 was illegal due to non compliance of the basic provisions of Section 25 Clause F of the Industrial Disputes Act, 1947.

16. RW1 Dr. Vivek Bhanyal has admitted in his cross-examination that they had entered into the contract with the respondent no.2 for providing services and consequently the petitioner was posted as security guard with them. He has also admitted that the salary of the petitioner was being paid by respondent no.2 and duty roaster was also prepared by the office of respondent no.2. It is important to observe that as per him there was no complaint against the petitioner regarding strike or misconduct. He is unaware of the fact whether the union formed by the petitioner was registered or not. He has also shown his ignorance to the fact that after sometime 145 security guards were revived by respondent no.2 however the petitioner was not kept on work. He has admitted that vide letter Ext. PW1/K there is no mention of the name of petitioner.

17. Documents have been produced to indicate that the service agreement between respondents no.1 and 2 ended on 16.4.2022. It is however clear from letter of communication between respondents no.1 and 2 that respondent no.2 was requested to continue the services till new tenders were invited after 15.4.2022 vide Ext. RW1/V. Finally the respondent no.2 was asked to resume the service vide letter dated 23.4.2022 from the Principal, Rajender Prasad Government Medical College Tanda. This implies that there was no dearth of work available with respondent no.2 and the termination of the contract or stoppage of service being provided by respondent no.2 to respondent no.1. It is already mentioned above that in order to support their case no oral evidence has been produced by respondent no.2. Similarly no oral evidence is controvert the allegations made by petitioner to the effect that after termination of the petitioner new hands were employed by the respondents and that the persons junior to the petitioner were retained by respondent no.2. In these circumstances considering the oral and documentary evidence produced before this court it is proved that petitioner's services were illegally terminated on 16.4.2022 by respondent no.2 and respondent no.2 committed violation of the Industrial Disputes Act, 1947

under Sections 25-F, 25-G and 25-H of the Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No.2

18. It has been proved from the overwhelming evidence while deciding issue no.1 above that the respondents had violated the basic provisions of the Industrial Disputes Act, 1947. Learned Counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., (2013) 10 SCC 324** wherein the Hon'ble Supreme Court has held in paras no. 38.1, 38.2 and 38.3 as follows:—

> *"38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

19. Learned Counsel for petitioner has submitted that the termination of the petitioner in the present case was illegal and no evidence has been led by the respondents to prove that petitioner was gainfully employed after termination of his services by the respondent no.2. In these circumstances the petitioner should be held entitled for reinstatement along-with back wages. I have carefully considered the facts and circumstances of the case. It is true that the termination was in violation of the basic provisions of the Industrial Disputes Act. The communication letters which have been produced on the case file indicate that there was strike and interruption of essential service during corona pandemic regarding which the complaints were made not particularly against the petitioner but number of workers who were members of the union. This consequence led to the termination which was not made in accordance with law. In these circumstances respondent No.2 is directed to reinstate the service of petitioner forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. This issue no.2 is decided accordingly in the favour of petitioner.

Issues No. 3, 5, 6 and 7

20. The onus of proving these issues was on the respondents. The respondents have not been able to justify the termination of the petitioner in accordance with the provisions of the Industrial Disputes Act. There is nothing on record to show that petitioner has suppressed the

material facts which would disentitle him or which would estopped from filing the present claim against the respondents. Similarly the petition is not bad for non-joinder of the necessary parties. Hence all these issues are decided in the favour of the petitioner.

Issue No.4

21. It has been observed in detail while deciding issue no.1 above that the petitioner himself has asserted that his employer was respondent no.2. There is no evidence to show a direct employer and employee relationship between the respondent no.1 and petitioner hence the issue no.4 is decided in the favour of respondent no.1.

RELIEF

22. In view of my discussion on the issues no. 1 to 7 above, the claim petition succeeds and is partly allowed. The petitioner is entitled for reinstatement forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 22nd day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Reference No. : 83/2023

Date of Institution : 12-9-2023

Date of Decision : 22-11-2025

Shri Kamal Kumar s/o Shri Mehar Chand, r/o Village Kandrer, P.O. Chetru, Tehsil Dharamshala, District Kangra, H.P. ..*Petitioner.*

Versus

1. The Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer).

2. The Chairman-cum-Managing Director, Himachal Pradesh Ex-Servicemen Corporation,(An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sumit Chaudhary, Ld. Adv.

For Respondent No.1 : Sh. B.C. Katoch, Ld. ADA

For Respondent No.2 : Sh. Ankur Soni, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Kamal Kumar s/o Shri Mehar Chand, r/o Village Kandrer, P.O. Chetru, Tehsil Dharamshala, District Kangra, H.P. by (i) the Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer) (ii) the Chairman-cum-Managing Director, Himachal Pradesh Ex-Servicemen Corporation, (An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) w.e.f. 16-04-2022 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were appointed by the Chairman cum Managing Director, Himachal Ex-Servicemen Corporation i.e. respondent no.2 in the capacity of security guard w.e.f. 23.8.2017 and after completion of all formalities his (petitioner's) service were deputed to the office of the Principal/Senior Medical Superintendent Dr. Rajinder Prasad Government Medical College, Tanda, i.e. respondent no.1 and as such petitioner had continued to discharge his duties under control and supervision of respondent no.1 till 15.4.2022. It is asserted that in the month of January/February, 2022 the security guards of respondent no.1 had formed the association/union in the name and style of Medical College Tanda Sauraksa Karamchari Union and vide resolution dated 21.3.2022 the President/Secretary of the union had served demand notice to respondents no.1 and 2 under Section 2-K of the Industrial Disputes Act, 1947 wherein seven different types of demands were raised by the union and copy of the same as forwarded to Labour-cum-Conciliation Officer Kangra at Dharamshala for necessary action. On 24.3.2022 the president/secretary of union has received letter from the office of Labour Officer Dharamshala with regard to demand notice 21.3.2022. It is asserted that the petitioner had discharged his duties w.e.f. 23.8.2017 upto 15.4.2022 continuously with the management of respondent no.1 and thereafter respondent no.2 has not allowed the duties w.e.f. 16.4.2022 which means that termination of the services of the petitioner was without complying with the provisions of the Industrial Disputes Act, 1947. While terminating the services of the petitioner respondents had not served any charge-sheet as per HP Industrial Employment Standing Order Act, 1946 as well as no inquiry was conducted against the petitioner. No one month's notice under Section 25-F (a) and no retrenchment compensation under Section 25-F (b) was given to the petitioner. No information with regard termination of the petitioner was sent to the Labour Inspector Dharamshala which was mandatory as envisaged under Section 25-F (c) of the Industrial Disputes Act. It is asserted that the petitioner had completed more than 240 days in each and every calendar year as well as 12 calendar months preceding from the date of termination. It is alleged that the respondents had violated the provisions of Section 25 Clause H of the Industrial Disputes Act. On 16.4.2022 the respondents had not allowed the services of 154 guards in the premises of the

respondent no.1 however the services of 145 security guards were again reinstated by the respondents except nine union office bearers and they are all working with the respondent no.1. It is asserted that the 154 security guards were the members of the union and office bearers of the union i.e. Vivek Pana (President, Sunil Kumar, General Secretary, Sandeep Kumar, Vice President, Atul Kumar, Secretary, Kamal Kumar, Cashier, Bhavdeep Raj and Vinay Kumar, Executive Members of the union were not allowed by the management and services of above said workmen/security guard were terminated by both the managements due to their union activities and it is alleged that the act of management was an unfair labour practice within the meaning of Section 2(A) read with Section 25-T and 25-U read with schedule 5th of the Industrial Disputes Act, 1947. It is asserted that the after reinstatement of 145 security guards the petitioner had also approached the Chairman-cum-Managing Director regarding his reinstatement but of no avail. It is asserted that due to pendency of demand notice dated 21.3.2022 the services of the petitioner were terminated by the department without obtaining permission from labour authority, Dharamshala and violated Section 33(2) (b) of the Industrial Disputes Act. It is asserted that the act of the department to terminate the services of petitioner on 16.4.2022 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. The management deprived the workmen of their fundamental rights under Article 14, 16 and 21 of the Constitution of India. It is asserted that the petitioner/workman is still unemployed and not gainfully employed anywhere from the date of his termination. It is prayed that the termination of the petitioner on dated 16.4.2022 may be revoked and the services of petitioner may be reinstated with full back wages, seniority and continuity along-with all consequential service benefits.

3. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, suppression of material facts, absence of relationship of employer and employee and absence industrial disputes under Section 2(g), 2(k) of the Industrial Disputes Act, petitioner not falling within definition of workman as given under Section 2(s) of the Act and respondent no.1 not an industry under the Industrial Disputes Act, 1947 were raised. On merits, it is asserted that the services of petitioner were appointed by Chairman-cum-Managing Director Himachal Pradesh Ex-Servicemen Corporation Hamirpur i.e. respondent no.2 with the respondent no.2 in the capacity of security guard after completion of all codal formalities. It is mentioned here that respondent no.1 came to know about the termination of the security service contract w.e.f. 15.4.2022 by respondent no.2 when respondent no.1 received notice of termination of security services contract vide its letter dated 11.3.2022. It is asserted that the respondent no.1 was not involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner. It is denied that respondent no.1 had terminated the services of petitioner. It is asserted that the services of petitioner were under control and supervision of respondent no.2 through its Assistant Security Guard posted with respondent no.1. It is denied that the services of petitioner were terminated by respondent no.1 however it is alleged that reinstatement of the services of petitioner comes under control and supervision of respondent no.2. It is denied for want of knowledge that the Association/Union in the name and style of Medical College Surksha Karamchari Union was formed in the month of January/February, 2022. However union was formed in the month of December on dated 19.12.2021. It is asserted that union had raised different types of seven demands but the same were not in the purview of respondent no.1 for reason that respondent no.2 raised consolidated monthly bill in the name of respondentno.1 and respondent no.1 made payment to respondent no.2 on the basis of monthly bill submitted by the respondent no.2 and as such respondent no.1 was in no way or manner involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner/applicant. The respondent no.1 hired the services from respondent no.2 on consolidated manpower basis but not on man to man basis. It is asserted that respondent no.1 had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 as well as Industrial Disputes (Central Rules) 1957 and under Sections 82 and 83 of H.P. Disputes Act (Rules), 1974. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In reply to the claim petition filed on behalf of respondent no.2 preliminary objections qua maintainability, mis-joinder and non-joinder of necessary parties, claim barred by delay and laches, suppression of material facts and estopple have been raised. On merits, it is asserted that security personnel outsourced through this corporation are barred from forming any union or association. It is asserted that petitioner was engaged as security guard on his request at RPGMC, Tanda initially for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend on his performance, rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. It is asserted that at the time of joining, the petitioner filed an affidavit dated 16.8.2017 duly signed by him with the respondent and as per Clause 2(iv) of the affidavit the petitioner declared '*that I shall not participate in any union activities strikes etc. in case doing so Corporation is free to terminate my services without any notice/warning/enquiry at any time'*. As per Clause 2 (vi) the petitioner declared that '*that in case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex. Servicemen Corporation is free to terminate my services without any notice forthwith'*. It is alleged that the petitioner had breached the conditions of duty sworn in affidavit. It is denied that the services of petitioner were terminated w.e.f. 16.4.2022 on verbal orders without complying with the necessary provisions of the Industrial Disputes Act, 1947. It is further mentioned that the replying respondent is not an industry under the purview of Industrial Disputes Act. It is however mentioned that security service contract of HP Ex-Servicemen Corporation with Dr. RPGMC, Tanda was terminated on 15.4.2022 when security personnel adopted to perform their duties by mutual arrangement without adhering to the eight hours shift against labour law. It is asserted that the act and conduct of petitioner was not as per the norms and rules due to which he was served with the show cause notices dated 11.3.2022. On dated 28.1.2022 the petitioner along-with other security personnel went on strike jeopardized the security of respondent no.1, its staff and patients. It is asserted that letter dated 28.1.2022 was issued by respondent no.2 to the Director, Medical Education & Research Kasumpti, Shimla. It is alleged that the act and conduct of petitioner was far from satisfactory and he was guilty of having breached the declaration made by him by way of duty sworn in affidavit by engaging in union activities. It is asserted that the petitioner had instigated other colleagues (security personnel) and created embarrassing situation at DR. RPGMC, Tanda when third wave of corona pandemic was on peak. It is asserted that fresh contract agreement was exercised with Dr. RPGMC, Tanda for providing security service w.e.f. 26.4.2022 since security services to hospital fall in the preview of essential services. The engagement of four security supervisor, 114 security guards and 42 female security guards made under new contract agreement which was done afresh. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

5. In separate rejoinders preliminary objections raised in reply were denied facts stated in the petition are reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the respondents have illegally terminated services of the petitioner w.e.f. 16.4.2022 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as alleged? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether there is no relationship of employer & employee between the petitioner and respondent No.1, as alleged? ..*OPR1*.

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? ..*OPRs.*

6. Whether the petitioner is estopped by his own act and conduct to file the present claim petition? ..*OPRs.*

7. Whether the petition is bad for non-joinder of the necessary parties, as alleged?..*OPR2.*

Relief.

7. The petitioner in order to prove his case has produced his affidavit Ext.PW1/A wherein he has reiterated the facts as stated in the claim petition. He has also produced on record copy of conciliation failure report Ext. PW1/B, copy of demand notice Ext. PW1/C, copy of authorization letter Ext. PW1/D, copy of notice dated 23.5.2022 Ext. PW1/E, copy of reply dated 6.6.2022 Ext. PW1/F, copy of agreement Ext. PW1/G, copy of resolution dated 19.12.2021 Ext. PW1/H, copy of letter dated 24.9.2021 Ext. PW1/J, copy of notification dated 22.2.2022 Ext.PW1/K, copy of show cause notice dated 15.3.2022 Ext. PW1/L, copy of reply to show cause notice Ext. PW1/M, copy of show cause notice dated 11.3.2022 Ext. PW1/N, copy of reply to show cause notice dated 25.4.2022 Ext. PW1/O and copy of reply to demand notice dated nil Ext. PW1/P.

8. Respondent on the other hand has examined Shri Vivek Banyal, Medical Superintendent, DR. RPGMC Kangra at Tanda by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of meeting dated 7.12.2005 Ext. RW1/B, copy of letter dated 8.2.2006 Ext. RW1/C, copy of letter dated 1.7.2003 Ext. RW1/D, copy of letter dated 16.12.2006 Ext. RW1/E, copy of letter dated 19.5.2010 Ext.RW1/F, copy of letter dated 8.6.2010 Ext. RW1/G, copy of letter dated 2.6.2017 Ext. RW1/H, copy of letter dated 13.7.2017 Ext. RW1/J, copy of letter dated 25 June, 2018 Ext. RW1/K, copy of letter dated 28.9.2018 Ext. RW1/L, copy of letter dated 11.5.2021 Ext. RW1/M, copy of letter dated 11.3.2022 Ext. RW1/N, copy of resolution dated 19.12.2021 Ext. RW1/O, copy of letter dated 21.3.2022 Ext. RW1/P, copy of agreement dated 2.1.2007 Ext. RW1/Q, copy of agreement dated 5.5.2022 Ext. RW1/R, copy of agreement dated 4.6.2024 Ext. RW1/S, copy of notice dated 26.3.2022 Ext. RW1/T, copy of notice dated 17.3.2022 Ext. RW1/U, copy of notice dated 16.4.2022 Ext. RW1/V and copy of notice dated 25.4.2022 Ext. RW1/W. Learned Counsel for the respondent no.2 has also produced on record copy of Ex-Serviceman Corporation Act Ext. RW2/A, copy of letter dated 28.1.2022 Ext. RW2/B, copy of letter dated 22.2.2022 Ext. RW2/C, copy of letter dated 11.3.2022 Ext. RW2/D, copy of notice Ext. RW2/E, copy of reply to show cause notice received on 25.3.2022 Ext. RW2/F and closed evidence on behalf of respondent no.2.

9. I have heard the learned Counsel for the petitioner as well as learned Dy. D.A. for respondent no.1 and learned Counsel for respondent no.2 at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. It is not disputed that the services of petitioner were engaged as security guard by Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation and deputed with Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda. Petitioner in his affidavit has asserted that he continued to discharge his duties under the control and supervision of Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda till 15.4.2022. RW1 Dr. Vivek Bhanyal has not denied that the services of petitioner were engaged through respondent no.2 but has asserted that respondent no.1 had no concern with the recruitment, selection, engagement or termination of the petitioner and that the services of petitioner were under the supervision and control of Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation. Petitioner in his cross-examination has admitted that he was appointed by respondent no.2. He also stated that his salary was paid by respondent no.2 and he was terminated by respondent no.2. He has clarified that he has no claim against respondent no.1. No oral evidence has been produced on behalf of respondent no.2 in this regard. In view of the statement of petitioner in his cross-examination this court would confine itself to the termination of petitioner by respondent no.2 who was employer of the petitioner.

12. As pleaded by the petitioner that respondents 2 is dealing with outsource of Ex-Servicemen for security duties to the various government institutions and State/Central Government. It is important to peruse the pleadings on behalf of respondent no.2 in the present case wherein it is submitted that petitioner on his request was engaged as security guard for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend upon his performance i.e. rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. Respondent no.2 has also asserted that at the time of joining of petitioner he filed affidavit dated 16.8.2017 duly signed by him and declared that he shall not participate in any union activities strikes etc. In case of doing so corporation is free to terminate his services without any notice, warning, enquiry at any time. It was also alleged that repeated complaints were received from Principal Employer, Rajender Prasad Government Medical College, Tanda regarding unsatisfactory security services. On 28.1.2022 the petitioner along-with other security personnel went on strike jeopardizing the security service of Rajender Prasad Government Medical College, Tanda, its staff and patients. In this regard letter dated 28.1.2022 was issued to the Director, Medical Education and Research Kasumpti, Shimla by Principal Dr. Rajender Prasad Govt. Medical College. Despite request by the respondent no.2 security personnel did not mend their behaviour hence another letter was issued on 22.2.2022 Ext. PW1/K regarding ensuring proper security services. Subsequently a notice dated 11.3.2022 was displayed in the Notice Board of Dr. Rajender Prasad

Government Medical College, Tanda. These circumstances it was clear that the termination of petitioner was on account of termination of contract between respondents. It is also alleged that petitioner instigated other colleagues and created embarrassing situation with respondent no.1 even during wave of corona pandemic and violation of Disaster Management Act, 2005. The petitioner was also served show cause notice on 15th March, 2022 whereby he ignored the charges levelled against him. He opted to serve on outsource basis and this contract with him was terminated on 16.4.2022 on termination of said contract petitioner stood terminated.

13. Pertinent to mention here that no oral evidence in support of these allegation was produced by the respondent no.2. Documents have been duly exhibited before this court. It is pleaded that termination of petitioner was on account of termination of contract period and since the petitioner violated the basic undertaking mentioned in the contract of employent by participating in union activities, strike etc. Respondents has produced on record Ext. RW2/A the Ex-Serviceman Corporation Act , 1979. The agreement/affidavit on behalf of petitioner is Ext. R2/A. Clause (iv) of the said agreement/affidavit reads as follows:—

"That I shall not participate in any union activities strikes etc. in case doing so corporation is free to terminate my services without any notice/warning /enquiry at any time".

Clause (vi) of affidavit/agreement also reads as follows:—

"In case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex-Servicemen Corporation is free to terminate my services without any notice forthwith".

14. Ext. RW2/B is the complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the Director, Medical Education & Research regarding formation of union by these security personnel of HP Ex-Servicemen Corporation respondent no.2. Ext. RW2/C is complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the CMD HP Ex-Servicemen Corporation. Subsequent show cause notice to the petitioner is Ext. RW2/C and reply is Ext. R2/B. With regard to the allegations made by the respondents that the petitioner had violated undertaking vide Ext. R2/A, it is pertinent to observe that the said agreement does not bear any date of execution and the stamp papers appears to have been purchased in the year 2017. As per pleadings of respondent no.2 the agreement is dated 16.8.2017. The period of agreement was for 10-12 months subject to extension from time to time. Respondents have not produced any document to show subsequent extension of the contract on the case file. The Hon'ble Supreme Court in **Damyanti Naranga vs. The Union Of India and Others, 1971 SCR (3) 840** has clearly held that formation of union is legal right and the fundamental right under Article 19 (i) (c) of the Constitution of India.

15. Clause (iv) and Clause (vi) of the agreement Ext. R2/A was hence unconstitutional and violative of fundamental right and principles of natural justice of workman even though show cause notice was issued to the petitioner the termination was essentially on account of no extension of contract between the petitioner and the respondent no.2. As already mentioned that no contract of employer and employee between the petitioner and respondent no.2 or the extension of the original contract for the year 2021 to 2022 has been produced on record to establish that during the period when the alleged show cause notices have been issued to the petitioner he was bound by the condition of original contract executed between the parties in the year 2017. It is not disputed that prior to 16 April, 2022 the petitioner had continuously worked with respondent no.2 for more than 240 days in each calendar months including the last 12 calendar months of his services. In these circumstances the termination of petitioner by respondent no.2 was illegal due to non compliance of the basic provisions of Section 25 Clause F of the Industrial Disputes Act, 1947.

16. RW1 Dr. Vivek Bhanyal has admitted in his cross-examination that they had entered into the contract with the respondent no.2 for providing services and consequently the petitioner was posted as security guard with them. He has also admitted that the salary of the petitioner was being paid by respondent no.2 and duty roaster was also prepared by the office of respondent no.2. It is important to observe that as per him there was no complaint against the petitioner regarding strike or misconduct. He is unaware of the fact whether the union formed by the petitioner was registered or not. He has also shown his ignorance to the fact that after sometime 145 security guards were revived by respondent no.2 however the petitioner was not kept on work. He has admitted that vide letter Ext. PW1/K there is no mention of the name of petitioner.

17. Documents have been produced to indicate that the service agreement between respondents no.1 and 2 ended on 16.4.2022. It is however clear from letter of communication between respondents no.1 and 2 that respondent no.2 was requested to continue the services till new tenders were invited after 15.4.2022 vide Ext. RW1/V. Finally the respondent no.2 was asked to resume the service vide letter dated 23.4.2022 from the Principal, Rajender Prasad Government Medical College Tanda. This implies that there was no dearth of work available with respondent no.2 and the termination of the contract or stoppage of service being provided by respondent no.2 to respondent no.1. It is already mentioned above that in order to support their case no oral evidence has been produced by respondent no.2. Similarly no oral evidence is controvert the allegations made by petitioner to the effect that after termination of the petitioner new hands were employed by the respondents and that the persons junior to the petitioner were retained by respondent no.2. In these circumstances considering the oral and documentary evidence produced before this court it is proved that petitioner's services were illegally terminated on 16.4.2022 by respondent no.2 and respondent no.2 committed violation of the Industrial Disputes Act, 1947 under Sections 25-F, 25-G and 25-H of the Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No. 2

18. It has been proved from the overwhelming evidence while deciding issue no.1 above that the respondents had violated the basic provisions of the Industrial Disputes Act, 1947. Learned Counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., (2013) 10 SCC 324** wherein the Hon'ble Supreme Court has held in paras no.38.1, 38.2 and 38.3 as follows:—

> *"38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a*

positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

19. Learned Counsel for petitioner has submitted that the termination of the petitioner in the present case was illegal and no evidence has been led by the respondents to prove that petitioner was gainfully employed after termination of his services by the respondent no.2. In these circumstances the petitioner should be held entitled for reinstatement along-with back wages. I have carefully considered the facts and circumstances of the case. It is true that the termination was in violation of the basic provisions of the Industrial Disputes Act. The communication letters which have been produced on the case file indicate that there was strike and interruption of essential service during corona pandemic regarding which the complaints were made not particularly against the petitioner but number of workers who were members of the union. This consequence led to the termination which was not made in accordance with law. In these circumstances respondent No.2 is directed to reinstate the service of petitioner forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. This issue no.2 is decided accordingly in the favour of petitioner.

Issues No. 3, 5, 6 and 7

20. The onus of proving these issues was on the respondents. The respondents have not been able to justify the termination of the petitioner in accordance with the provisions of the Industrial Disputes Act. There is nothing on record to show that petitioner has suppressed the material facts which would disentitle him or which would estopped from filing the present claim against the respondents. Similarly the petition is not bad for non-joinder of the necessary parties. Hence all these issues are decided in the favour of the petitioner.

Issue No.4

21. It has been observed in detail while deciding issue no.1 above that the petitioner himself has asserted that his employer was respondent no.2. There is no evidence to show a direct employer and employee relationship between the respondent no.1 and petitioner hence the issue no.4 is decided in the favour of respondent no.1.

RELIEF

22. In view of my discussion on the issues no. 1 to 7 above, the claim petition succeeds and is partly allowed. The petitioner is entitled for reinstatement forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 22nd day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 88/2023

Date of Institution : 19-9-2023

Date of Decision : 22-11-2025

Shri Pavneesh Kumar Chaudhary s/o Shri Pratap Chand, r/o Village Naushera, P.O. Rait, Tehsil Shahpur, District Kangra, H.P. ..*Petitioner.*

Versus

1. The Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer).

2. The Chairman-cum-Managing Director, Himachal Pradesh Ex-Servicemen Corporation,(An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sumit Chaudhary, Ld. Adv.

For Respondent No. 1 : Sh. B.C. Katoch, Ld. ADA

For Respondent No. 2 : Sh. Ankur Soni, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Pavneesh Kumar Chaudhary s/o Shri Pratap Chand, r/o Village Naushera, P.O. Rait, Tehsil Shahpur, District Kangra, H.P. by (i) the Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda, District Kangra, H.P. (Principal Employer) (ii) the Chairman-*cum*-Managing Director, Himachal Pradesh Ex-Servicemen Corporation, (An HP Government Undertaking), Opposite Hamir Hotel, Sainik Bhawan, District Hamirpur, H.P. (Contractor) w.e.f. 16-04-2022 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were appointed by the Chairman cum Managing Director, Himachal Ex-Servicemen Corporation i.e. respondent no.2 in the capacity of security guard w.e.f. 19.3.2021 and after completion of all formalities his (petitioner's) service were deputed to the office of the Principal/Senior Medical Superintendent Dr. Rajinder Prasad Government Medical College, Tanda, i.e. respondent no.1 and as such petitioner had continued to discharge his duties under control and supervision of respondent

no.1 till 15.4.2022. It is asserted that in the month of January/February, 2022 the security guards of respondent no.1 had formed the association/union in the name and style of Medical College Tanda Sauraksa Karamchari Union and vide resolution dated 21.3.2022 the President/Secretary of the union had served demand notice to respondents no.1 and 2 under Section 2-K of the Industrial Disputes Act, 1947 wherein seven different types of demands were raised by the union and copy of the same as forwarded to Labour-cum-Conciliation Officer Kangra at Dharamshala for necessary action. On 24.3.2022 the president/secretary of union has received letter from the office of Labour Officer Dharamshala with regard to demand notice 21.3.2022. It is asserted that the petitioner had discharged his duties w.e.f. 19.3.2021 upto 15.4.2022 continuously with the management of respondent no.1 and thereafter respondent no.2 has not allowed the duties w.e.f. 16.4.2022 which means that termination of the services of the petitioner was without complying with the provisions of the Industrial Disputes Act, 1947. While terminating the services of the petitioner respondents had not served any charge-sheet as per HP Industrial Employment Standing Order Act, 1946 as well as no inquiry was conducted against the petitioner. No one month's notice under Section 25-F (a) and no retrenchment compensation under Section 25-F (b) was given to the petitioner. No information with regard termination of the petitioner was sent to the Labour Inspector Dharamshala which was mandatory as envisaged under Section 25-F (c) of the Industrial Disputes Act. It is asserted that the petitioner had completed more than 240 days in each and every calendar year as well as 12 calendar months preceding from the date of termination. It is alleged that the respondents had violated the provisions of Section 25 Clause H of the Industrial Disputes Act. On 16.4.2022 the respondents had not allowed the services of 154 guards in the premises of the respondent no.1 however the services of 145 security guards were again reinstated by the respondents except nine union office bearers and they are all working with the respondent no.1. It is asserted that the 154 security guards were the members of the union and office bearers of the union i.e. Vivek Pana (President, Sunil Kumar, General Secretary, Sandeep Kumar, Vice President, Atul Kumar, Secretary, Kamal Kumar, Cashier, Bhavdeep Raj and Vinay Kumar, Executive Members of the union were not allowed by the management and services of above said workmen/security guard were terminated by both the managements due to their union activities and it is alleged that the act of management was an unfair labour practice within the meaning of Section 2(A) read with Section 25-T and 25-U read with schedule 5th of the Industrial Disputes Act, 1947. It is asserted that the after reinstatement of 145 security guards the petitioner had also approached the Chairman-cum-Managing Director regarding his reinstatement but of no avail. It is asserted that due to pendency of demand notice dated 21.3.2022 the services of the petitioner were terminated by the department without obtaining permission from labour authority, Dharamshala and violated Section 33(2) (b) of the Industrial Disputes Act. It is asserted that the act of the department to terminate the services of petitioner on 16.4.2022 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947. The management deprived the workmen of their fundamental rights under Article 14, 16 and 21 of the Constitution of India. It is asserted that the petitioner/workman is still unemployed and not gainfully employed anywhere from the date of his termination. It is prayed that the termination of the petitioner on dated 16.4.2022 may be revoked and the services of petitioner may be reinstated with full back wages, seniority and continuity along-with all consequential service benefits.

3. In reply to the claim petition on behalf of respondent no.1 preliminary objections qua maintainability, suppression of material facts, absence of relationship of employer and employee and absence industrial disputes under Section 2(g), 2(k) of the Industrial Disputes Act, petitioner not falling within definition of workman as given under Section 2(s) of the Act and respondent no.1 not an industry under the Industrial Disputes Act, 1947 were raised. On merits, it is asserted that the services of petitioner were appointed by Chairman-cum-Managing Director Himachal Pradesh Ex-Servicemen Corporation Hamirpur i.e. respondent no.2 with the respondent no.2 in the capacity of security guard after completion of all codal formalities. It is mentioned here that respondent no.1 came to know about the termination of the security service contract w.e.f. 15.4.2022 by respondent

no.2 when respondent no.1 received notice of termination of security services contract vide its letter dated 11.3.2022. It is asserted that the respondent no.1 was not involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner. It is denied that respondent no.1 had terminated the services of petitioner. It is asserted that the services of petitioner were under control and supervision of respondent no.2 through its Assistant Security Guard posted with respondent no.1. It is denied that the services of petitioner were terminated by respondent no.1 however it is alleged that reinstatement of the services of petitioner comes under control and supervision of respondent no.2. It is denied for want of knowledge that the Association/Union in the name and style of Medical College Surksha Karamchari Union was formed in the month of January/February, 2022. However union was formed in the month of December on dated 19.12.2021. It is asserted that union had raised different types of seven demands but the same were not in the purview of respondent no.1 for reason that respondent no.2 raised consolidated monthly bill in the name of respondentno.1 and respondent no.1 made payment to respondent no.2 on the basis of monthly bill submitted by the respondent no.2 and as such respondent no.1 was in no way or manner involved directly or indirectly in the recruitment, selection, engagement or termination of the petitioner/applicant. The respondent no.1 hired the services from respondent no.2 on consolidated manpower basis but not on man to man basis. It is asserted that respondent no.1 had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 as well as Industrial Disputes (Central Rules) 1957 and under Sections 82 and 83 of H.P. Disputes Act (Rules), 1974. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In reply to the claim petition filed on behalf of respondent no.2 preliminary objections qua maintainability, mis-joinder and non-joinder of necessary parties, claim barred by delay and laches, suppression of material facts and estopple have been raised. On merits, it is asserted that security personnel outsourced through this corporation are barred from forming any union or association. It is asserted that petitioner was engaged as security guard on his request at RPGMC, Tanda initially for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend on his performance, rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. It is asserted that at the time of joining, the petitioner filed an affidavit dated 28.1.2021 duly signed by him with the respondent and as per Clause 2(iv) of the affidavit the petitioner declared '*that I shall not participate in any union activities strikes etc. in case doing so Corporation is free to terminate my services without any notice/warning/enquiry at any time'*. As per Clause 2 (vi) the petitioner declared that '*that in case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex. Servicemen Corporation is free to terminate my services without any notice forthwith'*. It is alleged that the petitioner had breached the conditions of duty sworn in affidavit. It is denied that the services of petitioner were terminated w.e.f. 16.4.2022 on verbal orders without complying with the necessary provisions of the Industrial Disputes Act, 1947. It is further mentioned that the replying respondent is not an industry under the purview of Industrial Disputes Act. It is however mentioned that security service contract of HP Ex-Servicemen Corporation with Dr. RPGMC, Tanda was terminated on 15.4.2022 when security personnel adopted to perform their duties by mutual arrangement without adhering to the eight hours shift against labour law. It is asserted that the act and conduct of petitioner was not as per the norms and rules due to which he was served with the show cause notices dated 11.3.2022. On dated 28.1.2022 the petitioner along-with other security personnel went on strike jeopardized the security of respondent no.1, its staff and patients. It is asserted that letter dated 28.1.2022 was issued by respondent no.2 to the Director, Medical Education & Research Kasumpti, Shimla. It is alleged that the act and conduct of petitioner was far from satisfactory and he was guilty of having breached the declaration made by him by way of duty sworn in affidavit by engaging in union activities. It is

asserted that the petitioner had instigated other colleagues (security personnel) and created embarrassing situation at DR. RPGMC, Tanda when third wave of corona pandemic was on peak. It is asserted that fresh contract agreement was exercised with Dr. RPGMC, Tanda for providing security service w.e.f. 26.4.2022 since security services to hospital fall in the preview of essential services. The engagement of four security supervisor, 114 security guards and 42 female security guards made under new contract agreement which was done afresh. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

5. In separate rejoinders preliminary objections raised in reply were denied facts stated in the petition are reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the respondents have illegally terminated services of the petitioner w.e.f. 16.4.2022 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged? ..*OPP.*

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits and compensation, as alleged? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether there is no relationship of employer & employee between the petitioner and respondent No.1, as alleged? ..*OPR1.*

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? ..*OPRs.*

6. Whether the petitioner is estopped by his own act and conduct to file the present claim petition? ..*OPRs.*

7. Whether the petition is bad for non-joinder of the necessary parties, as alleged?..*OPR2.*

Relief.

7. The petitioner in order to prove his case has produced his affidavit Ext.PW1/A wherein he has reiterated the facts as stated in the claim petition. He has also produced on record copy of conciliation failure report Ext. PW1/B, copy of demand notice Ext. PW1/C, copy of authorization letter Ext. PW1/D, copy of notice dated 23.5.2022 Ext. PW1/E, copy of reply dated 6.6.2022 Ext. PW1/F, copy of agreement Ext. PW1/G, copy of resolution dated 19.12.2021 Ext. PW1/H, copy of letter dated 24.9.2021 Ext. PW1/J, copy of notification dated 22.2.2022 Ext.PW1/K, copy of show cause notice dated 15.3.2022 Ext. PW1/L, copy of reply to show cause notice Ext. PW1/M and copy of reply to demand notice dated nil Ext. PW1/N.

8. Respondent on the other hand has examined Shri Shri Vivek Banyal, Medical Superintendent, DR. RPGMC Kangra at Tanda by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of meeting dated 7.12.2005 Ext. RW1/B, copy of letter dated 8.2.2006 Ext. RW1/C, copy of letter dated 1.7.2003 Ext. RW1/D, copy of letter dated 16.12.2006 Ext. RW1/E, copy of letter dated 19.5.2010 Ext.RW1/F, copy of letter dated 8.6.2010 Ext. RW1/G, copy of letter dated 2.6.2017 Ext. RW1/H,

copy of letter dated 13.7.2017 Ext. RW1/J, copy of letter dated 25 June, 2018 Ext. RW1/K, copy of letter dated 28.9.2018 Ext. RW1/L, copy of letter dated 11.5.2021 Ext. RW1/M, copy of letter dated 19.12.2021 Ext. RW1/N, copy of agreement dated 2.1.2007 Ext. RW1/O, copy of letter dated 18.3.2022 Ext. RW1/P, copy of notice dated 6.3.2022 Ext. RW1/Q, copy of letter dated 26.3.2022 Ext. RW1/R, copy of notice dated 28.3.2022 Ext. RW1/S, copy of letter dated 16.4.2022 Ext. RW1/T, copy of notice dated 21.4.2022 Ext.RW1/U, copy of letter dated 23.4.2022 Ext. RW1/V and copy of bills Ext. RW1/W. Learned Counsel for the respondent no.2 has also produced on record copy of Ex-Serviceman Corporation Act Ext. RW2/A, copy of letter dated 28.1.2022 Ext. RW2/B, copy of letter dated 22.2.2022 Ext. RW2/C, copy of letter dated 11.3.2022 Ext. RW2/D, copy of notice Ext. RW2/E, copy of reply to show cause notice dated 23.3.2022 Ext. RW2/F and closed evidence on behalf of respondent no.2.

9. I have heard the learned Counsel for the petitioner as well as learned Dy. D.A. for respondent no.1 and learned Counsel for respondent no.2 at length and records perused.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

11. It is not disputed that the services of petitioner were engaged as security guard by Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation and deputed with Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda. Petitioner in his affidavit has asserted that he continued to discharge his duties under the control and supervision of Principal/Senior Medical Superintendent, Dr. Rajender Prasad Government Medical College, Tanda till 15.4.2022. RW1 Dr. Vivek Bhanyal has not denied that the services of petitioner were engaged through respondent no.2 but has asserted that respondent no.1 had no concern with the recruitment, selection, engagement or termination of the petitioner and that the services of petitioner were under the supervision and control of Chairman-cum-Managing Director, Himachal Ex-Servicemen Corporation. Petitioner in his cross-examination has admitted that he was appointed by respondent no.2. He also stated that his salary was paid by respondent no.2 and he was terminated by respondent no.2. He has clarified that he has no claim against respondent no.1. No oral evidence has been produced on behalf of respondent no.2 in this

regard. In view of the statement of petitioner in his cross-examination this court would confine itself to the termination of petitioner by respondent no.2 who was employer of the petitioner.

12. As pleaded by the petitioner that respondents 2 is dealing with outsource of Ex-Servicemen for security duties to the various government institutions and State/Central Government. It is important to peruse the pleadings on behalf of respondent no.2 in the present case wherein it is submitted that petitioner on his request was engaged as security guard for 12 months with a condition that extension of his service on outsource basis on expiry of current engagement period will depend upon his performance i.e. rendering satisfactory service, not indulging in unlawful activities, not forming unions, indiscipline, disobedience, breach of trust, absence without leave, coming late to duty, found sleeping on duty, collective insubordination, writing of anonymous complaints and other such as shabby turnout, using abusive language etc. Respondent no.2 has also asserted that at the time of joining of petitioner he filed affidavit dated 28.1.2021 duly signed by him and declared that he shall not participate in any union activities strikes etc. In case of doing so corporation is free to terminate his services without any notice, warning, enquiry at any time. It was also alleged that repeated complaints were received from Principal Employer, Rajender Prasad Government Medical College, Tanda regarding unsatisfactory security services. On 28.1.2022 the petitioner along-with other security personnel went on strike jeopardizing the security service of Rajender Prasad Government Medical College, Tanda, its staff and patients. In this regard letter dated 28.1.2022 was issued to the Director, Medical Education and Research Kasumpti, Shimla by Principal Dr. Rajender Prasad Govt. Medical College. Despite request by the respondent no.2 security personnel did not mend their behaviour hence another letter was issued on 22.2.2022 Ext. PW1/K regarding ensuring proper security services. Subsequently a notice dated 11.3.2022 was displayed in the Notice Board of Dr. Rajender Prasad Government Medical College, Tanda. These circumstances it was clear that the termination of petitioner was on account of termination of contract between respondents. It is also alleged that petitioner instigated other colleagues and created embarrassing situation with respondent no.1 even during wave of corona pandemic and violation of Disaster Management Act, 2005. The petitioner was also served show cause notice on 15th March, 2022 whereby he ignored the charges levelled against him. He opted to serve on outsource basis and this contract with him was terminated on 16.4.2022 on termination of said contract petitioner stood terminated.

13. Pertinent to mention here that no oral evidence in support of these allegation was produced by the respondent no.2. Documents have been duly exhibited before this court. It is pleaded that termination of petitioner was on account of termination of contract period and since the petitioner violated the basic undertaking mentioned in the contract of employment by participating in union activities, strike etc. Respondents has produced on record Ext. RW2/A the Ex-Serviceman Corporation Act, 1979. The agreement/affidavit on behalf of petitioner is Ext. R2/A. Clause (iv) of the said agreement/affidavit reads as follows:—

> *"That I shall not participate in any union activities strikes etc. in case doing so corporation is free to terminate my services without any notice/warning /enquiry at any time".*

Clause (vi) of affidavit/agreement also reads as follows:—

> *"In case I am found to have indulged in unlawful activities or acts of indiscipline etc. H.P. Ex-Servicemen Corporation is free to terminate my services without any notice forthwith".*

14. Ext. RW2/B is the complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the Director, Medical Education & Research regarding formation of union by these security personnel of HP Ex-Servicemen Corporation respondent no.2. Ext. RW2/C is complaint made by Principal, Dr. Rajender Prasad Government Medical College, Tanda to the

CMD HP Ex-Servicemen Corporation. Subsequent show cause notice to the petitioner is Ext. RW2/C and reply is Ext. R2/B. With regard to the allegations made by the respondents that the petitioner had violated undertaking vide Ext. R2/A, it is pertinent to observe that the said agreement was w.e.f. 1.2.2021 to 31.1.2022. The period of the agreement was for one year which was also extendable from time to time. Respondents have not produced any document to show subsequent extension of the contract on the case file. The Hon'ble Supreme Court in **Damyanti Naranga vs. The Union Of India and Others, 1971 SCR (3) 840** has clearly held that formation of union is legal right and the fundamental right under Article 19 (i) (c) of the Constitution of India.

15. Clause (iv) and Clause (vi) of the agreement Ext. R2/A was hence unconstitutional and violative of fundamental right and principles of natural justice of workman even though show cause notice was issued to the petitioner the termination was essentially on account of non extension of contract between the petitioner and the respondent no.2. As already mentioned that no contract of employer and employee between the petitioner and respondent no.2 or the extension of the original contract for the year 2021 to 2022 beyond 31.1.2022 has been produced on record to establish that during the period when the alleged show cause notices have been issued to the petitioner he was bound by the condition of original contract executed between the parties in the year 2021. It is not disputed that prior to 16 April, 2022 the petitioner had continuously worked with respondent no.2 for more than 240 days in each calendar months including the last 12 calendar months of his services. In these circumstances the termination of petitioner by respondent no.2 was illegal due to non compliance of the basic provisions of Section 25 Clause F of the Industrial Disputes Act, 1947.

16. RW1 Dr. Vivek Bhanyal has admitted in his cross-examination that they had entered into the contract with the respondent no.2 for providing services and consequently the petitioner was posted as security guard with them. He has also admitted that the salary of the petitioner was being paid by respondent no.2 and duty roaster was also prepared by the office of respondent no.2. It is important to observe that as per him there was no complaint against the petitioner regarding strike or misconduct. He is unaware of the fact whether the union formed by the petitioner was registered or not. He has also shown his ignorance to the fact that after sometime 145 security guards were revived by respondent no.2 however the petitioner was not kept on work. He has admitted that vide letter Ext. PW1/K there is no mention of the name of petitioner.

17. Documents have been produced to indicate that the service agreement between respondents no.1 and 2 ended on 16.4.2022. It is however clear from letter of communication between respondents no.1 and 2 that respondent no.2 was requested to continue the services till new tenders were invited after 15.4.2022 vide Ext. RW1/V. Finally the respondent no.2 was asked to resume the service vide letter dated 23.4.2022 from the Principal, Rajender Prasad Government Medical College Tanda. This implies that there was no dearth of work available with respondent no.2 and the termination of the contract or stoppage of service being provided by respondent no.2 to respondent no.1. It is already mentioned above that in order to support their case no oral evidence has been produced by respondent no.2. Similarly no oral evidence is there to controvert the allegations made by petitioner to the effect that after termination of the petitioner new hands were employed by the respondents and that the persons junior to the petitioner were retained by respondent no.2. In these circumstances considering the oral and documentary evidence produced before this court it is proved that petitioner's services were illegally terminated on 16.4.2022 by respondent no.2 and respondent no.2 committed violation of the Industrial Disputes Act, 1947 under Sections 25-F, 25-G and 25-H of the Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No. 2

18. It has been proved from the overwhelming evidence while deciding issue no.1 above that the respondents had violated the basic provisions of the Industrial Disputes Act, 1947. Learned

Counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., (2013) 10 SCC 324** wherein the Hon'ble Supreme Court has held in paras no. 38.1, 38.2 and 38.3 as follows:—

> *"38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

19. Learned Counsel for petitioner has submitted that the termination of the petitioner in the present case was illegal and no evidence has been led by the respondents to prove that petitioner was gainfully employed after termination of his services by the respondent no.2. In these circumstances the petitioner should be held entitled for reinstatement along-with back wages. I have carefully considered the facts and circumstances of the case. It is true that the termination was in violation of the basic provisions of the Industrial Disputes Act. The communication letters which have been produced on the case file indicate that there was strike and interruption of essential service during corona pandemic regarding which the complaints were made not particularly against the petitioner but number of workers who were members of the union. This consequence led to the termination which was not made in accordance with law. In these circumstances respondent No.2 is directed to reinstate the service of petitioner forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. This issue no.2 is decided accordingly in the favour of petitioner.

Issues No. 3,5,6 and 7

20. The onus of proving these issues was on the respondents. The respondents have not been able to justify the termination of the petitioner in accordance with the provisions of the Industrial Disputes Act. There is nothing on record to show that petitioner has suppressed the material facts which would disentitle him or which would estopped from filing the present claim against the respondents. Similarly the petition is not bad for non-joinder of the necessary parties. Hence all these issues are decided in the favour of the petitioner.

Issue No.4

21. It has been observed in detail while deciding issue no.1 above that the petitioner himself has asserted that his employer was respondent no.2. There is no evidence to show a direct

employer and employee relationship between the respondent no.1 and petitioner hence the issue no.4 is decided in the favour of respondent no.1.

RELIEF

22. In view of my discussion on the issues no. 1 to 7 above, the claim petition succeeds and is partly allowed. The petitioner is entitled for reinstatement forthwith along-with seniority, past service benefits and 50% of back wages from date of illegal termination. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 22nd day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-I-NDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 36/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Raj Kumar s/o Shri Thakur Dass, r/o Village Kot Kwala, P.O. Jamanabad, Tehsil & District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Raj Kumar S/O Shri Thakur Dass, R/O Village Kot Kwala, P.O, Jamanabad, Tehsil & District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. August, 1998 as Driver and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar preceding months from the date of his termination. The petitioner was filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action and prayed for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary action and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers

along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It is asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman petitioner not come to the court with clean hands, cause of action. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. The claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from August, 1998 to March, 2020. The petitioner was never engaged in August, 1998. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. No show cause notice was issued to the petitioner as the petitioner was engaged on temporary and contractual basis and he was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual

work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner do not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW2/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass,

Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Raj Kumar in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the persons mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipt Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Partly Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Raj Kumar has asserted in his affidavit that he was appointed as a driver by the respondent in the year 1998 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent. "HP39-4615, HP39-5575, HP68B-6161 and HP68-0624".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced documentary evidence in support of his plea i.e. appointment letter or EPF statement. He states that these documents were not given to him by respondent. Similarly petitioner has also asserted that he was paid Rs.92/- per day but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is*

discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Raj Kumar (petitioner) has stated that he was paid Rs.92 per day and total salary of Rs.2700/- per month. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Raj Kumar has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison, or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the*

burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:—

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1998. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel

for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about office order Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letter was not received back. PW4 Shri Raj Kumar has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice was received, the office order Ext. RW3/A mentions that management had agreed to regain the service of employees contacted with Industrial Dispute. Petitioner denied that he did not visit the employer after compromise. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued office order to rejoin his service on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner.

Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 37/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Soni Kumar s/o Shri Roshan Lal, r/o Village Jeer Bhal, P.O. Bassi, Tehsil & District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Soni Kumar s/o Shri Roshan Lal, r/o Village Jeer Bhal, P.O. Bassi, Tehsil & District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. January, 2000 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised

various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the

date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from January, 2000 to March, 2020. The petitioner was never engaged in January, 2000. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner as he was engaged on a contractual and temporary basis. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise

averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Soni Kumar in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the

respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Soni Kumar has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 2000 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP68-5625, HP68-6575, HP68-2594, HP68-4935, HP68-0287, HP68-7775, HP68-6363, HP68-0111 and HP68-7585".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Soni Kumar (petitioner) has stated that he was paid Rs.82 per day. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Soni Kumar has admitted a suggestion that respondent prepared voucher on day to day basis but asserted that he worked regularly. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison, or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the

case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD

entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2000. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the

petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

"10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Soni Kumar has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice/office order was received, the notice itself described that management will regain the services of employees contacted with Industrial Dispute. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Reference No. : 38/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Rakesh Kumar s/o Shri Parmodh Singh, r/o Village Garla Sarkari, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Rakesh Kumar S/O Shri Parmodh Singh, R/O Village Garla Sarkari, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. August, 2009 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar,Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul

Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from August, 2009 to March, 2020. The petitioner was never engaged in August, 2009. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. No show cause notice was issued to the petitioner as petitioner was engaged on contractual and temporary basis. The

petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who was called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Rakesh Kumar in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan,District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary is entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by their office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Rakesh Kumar has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 2009 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

> "HP68-0122, HP68-1404, HP68-1945, HP68-1446,HP68-2525, HP68-1763, HP68-1746, HP68-5858, 1745, HP68-1935 and HP68-1766".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never

completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Rakesh Kumar (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Rakesh Kumar has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not

controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:-

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison, or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:-

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this*

Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.
The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage

register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1998. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

“10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen”.

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Rakesh Kumar has however denied that he had not joined his service in accordance with the agreement. He has admitted that he received office order but asserts that he was not allowed to join. Even if presumed that the notice/office order was received, the notice itself described the

consequence of not joining "necessary action shall be taken as per HP Model Standing Order Act". RW4 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 40/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Raj Kumar s/o Shri Damodar Ram, r/o VPO Maruhun, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Raj Kumar s/o Damodar Ram, r/o V.P.O. Maruhun, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during October, 2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. June, 2010 as Driver and continuously worked in the said

capacity uptil October, 2019. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. October, 2019 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their own. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the

biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. October, 2019. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during October, 2019 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from June, 2010 to October, 2019. The petitioner was never engaged in June, 2010. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence

to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:-

1. Whether the act of termination of services of the petitioner during October, 2019 by the respondent is/was illegal and unjustified, as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala has examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Raj Kumar in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of

Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipt Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Partly Yes
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Raj Kumar has asserted in his affidavit that he was appointed as a driver by the respondent in the year 2010 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP68-1495, HP68-1718, HP68-1945, HP68-8485, HP68-6665, HP68-6565, HP68-1665, HP68-6585, HP68-0686, HP68-1945 and HP68-1746".

11. In October, 2019 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced documentary evidence in support of his plea i.e. appointment letter or EPF statement. He states that these documents were not given to him by respondent. Similarly petitioner has also asserted that he was paid Rs.92/- per day and total salary of Rs.2700/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down*

that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Raj Kumar (petitioner) has stated that he was paid Rs.92 per day and total salary of Rs.2700/- per month. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Raj Kumar has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison, or

(iii) Who is employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

> ***"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.-*** *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*
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> ***16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022****, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*
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> *"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a*

muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application.

Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2010. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing

hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about office order Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letter was not received back. PW4 Shri Raj Kumar has however denied that he had not joined his service in accordance with the agreement. He has admitted that he received notice but added that respondent did not allow him to join. The notice/office order Ext. RW3/A shows that management had agreed to regain service of employees contacted with Industrial Disputes. Petitioner denied that he did not visit the employer after compromise. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued office order to rejoin his service on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No. 2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent

does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 42/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Chain Singh s/o Shri Mehar Singh, r/o Village Basa Balu, P.O. Jond, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Chain Singh s/o Shri Mehar Singh, r/o Village Basa Balu, P.O. Jond, Tehsil Nurpur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during October, 2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. August, 2015 as Driver and continuously worked in the said capacity uptil October, 2019. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. October, of 2019 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment

compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar,Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shr. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 AM. On 28.9.2020 Shri N.L.Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner, M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. October, 2019. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during October, 2019 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was

only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from August, 2015 to October, 2019. The petitioner was never engaged in August, 2015. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during October, 2019 by the respondent is/was illegal and unjustified, as alleged? ..*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EFP District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/C and list of drivers and conductors Ext. PW2/D & Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala has examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Chain Singh in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by our office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized

representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipt Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Partly Yes
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Chain Singh has asserted in his affidavit that he was appointed as a driver by the respondent in August, 2015 without any appointment letter or terms of employment. He continuously worked till October, 2019 and worked as conductor in the following buses belonging to respondent.

"HP68-0122, HP68-8555, Hp68-0259, HP68-0111, HP68-3735, HP68-8485 and HP68-6565".

11. In October, 2019 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged

the petitioner on similar post i.e. driver, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual driver and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:-

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Chain Singh (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj

Sharma has admitted that payment of a working day was made on said working day and PW4 Chain Singh has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:—*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its

enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2015 to 2019 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2008. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

> “10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen”.

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipt Ext. RW4/B. Learned

counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Chain Singh has however denied that he had not joined his service in accordance with the agreement. He has admitted that he received the notice but when he went to office of respondent he was not allowed to join. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued office order to regain the services of the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. The termination of petitioner is alleged to be during October, 2019. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No.3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily

wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs .

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Reference No. : 43/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Sourav Sharma alias Neetu s/o Shri Mahesh Chand Sharma, r/o V.P.O. Pharer, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld AR

: Sh. Vijay Kaundal Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Sourav Sharma alias Neetu s/o Shri Mahesh Chand Sharma, r/o V.P.O. Pharer, Tehsil Palampur, District Kangra, H.P. by the Proprietor,

M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. April, 2009 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after

relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from April, 2009 to March, 2020. The petitioner was never engaged in April, 2009. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner as he was engaged on contractual and temporary basis. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were

stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . *OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? . . *OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . . *OPR.*

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary,

learned Advocate with the department and inquiry was conducted in this complaint and the complaint was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Sourav Sharma in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by their office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Partly Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief. : Claim petition is partly allow peroperative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Sourav Sharma has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 1998 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP68-6575, HP68-1766, HP68-9495, HP68-0164, HP68-0134, HP68-1756, HP68-1551, HP68-0629 and HP68-7585".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapat Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he had completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:-

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the

claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Sourav Sharma (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Sourav Sharma has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:-

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the*

burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular election/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2009. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel

for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:-

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Sourav Sharma has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notices were received, the notice/office order itself described that management will regain the services of employees contacted with Industrial Disputes. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner.

Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMMSHALA (HP)

Reference No. : 44/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Yash Paul Sharma s/o Shri Gian Chand Sharma, r/o V.P.O. Lower Dhalor, Tehsil Jawali, District Kangra, H.P. ..*Petitioner*.

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Yash Pal Sharma s/o Shri Gian Chand Sharma, r/o V.P.O. Lower Dhalor, Tehsil Jawali, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. August, 2008 as Driver and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020

without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their own. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority,

continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from August, 2008 to March, 2020. The petitioner was never engaged in august, 2008. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:-

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? *OPR.*

4. Whether the petitioner has no cause of action to file the present case, as alleged? . . *OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . . *OPR.*

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Yash Pal Sharma in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case

registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by our office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipt Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Yash Paul Sharma has asserted in his affidavit that he was appointed as a driver by the respondent in the year 2008 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP40-1155, HP68-0162, HP68-0163, HP68-0134, HP68-0130 and HP68-0356".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was

issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced documentary evidence in support of his plea i.e. appointment letter or EPF statement. He states that these documents were not given to him by respondent. Similarly petitioner has also asserted that he was paid Rs.92/- per day but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:-

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to

the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Yash Pal Sharma (petitioner) has stated that he was paid Rs.92 per day on the voucher. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Yash Paul Sharma has admitted a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:-

> *"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]*
>
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
> *(ii) who is employed in the police service or as an officer or other employee of a prison, or*
> *(iii) who is employed mainly in a managerial or administrative capacity, or*
> *(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"*

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:-

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once".

The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra)

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2008 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary

evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2008. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:-

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about office order Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letter was not received back. PW4 Shri Yash Paul Sharma has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice/officer order was received, petitioner has mentioned that documents mentioned in office order was already submitted to employer. He denied that he did not visit the employer after compromise. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued office order to regain his services on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner.

Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-I-NDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 45/2021

Date of Institution : 12-3-2021

Date of Decision : 26-11-2025

Shri Gulshan Walia s/o Shri Om Prakash Walia, r/o Village & P.O. Chetru, Tehsil Dharamshala, District Kangra, H.P. ..*Petitioner*.

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Gulshan Walia, s/o Shri Om Prakash Walia, r/o V.P.O. Chetru, Tehsil Dharamshala, District Kangra, H.p. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. May, 2016 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to

Shri Pawan Kumar and Shr. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from December, 1998 to March, 2020. The petitioner was never engaged in December, 1998. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. No notice was issued to the petitioner as he was engaged on contractual and temporary basis. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never

asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no cause of action to file the present case, as allege . .*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . .*OPR.*

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet

of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Gulshan Walia in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the persons mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by their office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Partly Yes

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.

10. Petitioner Gulshan Walia has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 2016 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP68-0107, HP68-140, HP68-1925, HP68-0285 and HP68-6262".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion

of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:-

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Gulshan Walia (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Gulshan Walia has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:-

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC*

that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2015 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the

affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1998. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipts Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Gulshan Walia has however denied that he had not joined his service in accordance with the agreement. He has not denied that he received notice but asserts that he was not allowed to join. Even if presumed that the notice/office order was received, the notice itself described the consequence of not joining "necessary action shall be taken as per HP Model Standing Order Act". RW4 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide

continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 94/2021

Date of Institution : 16-9-2021

Date of Decision : 26-11-2025

Shri Jagdeep Chand s/o Shri Desh Raj, r/o Village & Post Office Mainjha, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv

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: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

"Whether the termination of services of Shri Jagdeep Chand s/o Shri Desh Raj, r/o V.P.O. Mainjha, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. November, 1999 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent

had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from November, 1999 to March, 2020. The petitioner was never engaged in November, 1999. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that show cause notice was issued to the petitioner on 1.1.2021 for not submitted requisite documents and he did not resume or join the part-time contractual work as and when called by the respondent. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is

asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? .. *OPR*

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Jagdeep Chand in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also

examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by their office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Petitioner Jagdeep Chand has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 1999 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

> "HP68-4615, HP68-4655, HP68-4945, HP68-4765, HP68-1155, HP68-6665, HP68-1111, HP68-0255, HP68-0254, HP68-7585, HP68-0121, HP68-0122, HP68-2967, HP68-1759 and HP68-1756".

11 In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-*cum*-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the*

nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Jagdeep Chand (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Jagdeep Chand has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below: "29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in*

terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained

under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1999. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact

once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—
"10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/B along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Jageep Chand has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice was received, the notice itself described the consequence of not joining "necessary action shall be taken as per HP Model Standing Order Act". RW4 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No.3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 95/2021

Date of Institution : 16-9-2021

Date of Decision : 26-11-2025

Shri Madan Lal s/o Shri Prem Chand, r/o VPO Bahtu-Samula, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

> "Whether the termination of services of Shri Madan Lal s/o Shri Prem Chand, r/o Village Bahtu-Samula, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. September, 2004 as Driver and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the

clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar preceding months from the date of his termination. The petitioner was filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action and prayed for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary action and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It is asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman petitioner not come to the court with clean hands, cause of action are raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. The claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from September, 2004 to March, 2020. The petitioner was never engaged in September, 2004. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. No show cause notice was issued to the petitioner as the petitioner was engaged on temporary and contractual basis and he was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner do not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable, as alleged? . .*OPR*.

4. Whether the petitioner has no cause of action to file the present case, as alleged? . . *OPR*.

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . . *OPR*.

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Madan Lal in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated

1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipt Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Petitioner Madan Lal has asserted in his affidavit that he was appointed as a driver by the respondent in the year 2004 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

> "HP68-6515, HP68-1756, HP68-0108, HP68-0107, HP68-0285, HP68-1715, HP68-0259, HP68-0164, HP68-0162, HP68-0412, HP68-0413, HP68-0130, HP68-0356, HP68-4715, HP68-3635 and HP68-3735".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed

and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engage the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced documentary evidence in support of his plea i.e. appointment letter or EPF statement. He states that these documents were not given to him by respondent. Similarly petitioner has also asserted that he was paid Rs.92/- per day and total salary of Rs.2750/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on

which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Madan Lal (petitioner) has stated that he was paid Rs.92 per day and total salary of Rs.2750/- per month. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Madan Lal has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra

Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2000 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from

20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2004. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:-

"10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about office order Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letter was not received back. PW4 Shri Madan Lal has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice Ext. RW3/A was received, the management had agreed to regain the services of employees contacted with industrial dispute. Petitioner denied that he did not visit the employer after compromise. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued office order to rejoin his service on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner.

Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 107/2021

Date of Institution : 31-8-2021

Date of Decision : 26-11-2025

Shri Sanjay Kumar Mishra s/o Shri Nitya Nand Mishra, r/o Village Gadiyara, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv

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For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether the termination of services of Shri Sanjay Kumar Mishra s/o Shri Nitya Nand Mishra, r/o Village Gadiyara, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during April, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. July, 2015 as Driver and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour

Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner not approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from July, 2015 to March, 2020. The petitioner was never engaged in July, 2015. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a

registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during April, 2020 by the respondent is/was illegal and unjustified, as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable, as alleged? . .*OPR*.

4. Whether the petitioner has no cause of action to file the present case, as alleged? . .*OPR*.

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . .*OPR*.

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/C, list of drivers and conductors Ext. PW2/D and Ext. PW2/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Sanjay Kumar Mishra in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B and RW4/C.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Sanjay Kumar Mishra has asserted in his affidavit that he was appointed as a driver by the respondent in the year 2008 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

"HP68-0109, HP68-9585, HP68-3635 and HP68-7585".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.92/- per day and total salary of Rs.2700/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner there is no basis for concluding that he had completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion

of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Sanjay Kumar Mishra (petitioner) has stated that he was paid Rs.92 per day and total payment of Rs.2700/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Sanjay Kumar Mishra has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or
(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not*

traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—
"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2015 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2015. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his

duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:-

“10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen”.

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about Ext. RW3/B along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notice has been duly served to the petitioner as the registered letters were not received back. PW4 Shri Sanjay Kumar Mishra has however denied that he had not joined his service in accordance with the agreement. He has admitted that he received the office order but asserts that when he visited the office of respondent he was not allowed to join. Even if presumed that the notice/office order was received, the notice itself described the consequence of not joining “So, keeping in view model standing orders it is to intimate you to state reason for your regular absence from your duty within 7 days of receiving this notice otherwise action as per labour laws is taken against you”. RW4 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner’s employment. Admittedly the termination as per reference was during ‘corona pandemic’. Petitioner has proved that he was disengaged in March, 2020 which fact is consistent with demand notice Ext. PW3/A. Thus a variance of date of

termination in reference is of no consequence. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-I-NDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 96/2021

Date of Institution : 16-9-2021

Date of Decision : 26-11-2025

Shri Ashok Kumar s/o Shri pasinda Ram, r/o VPO Boda, Tehsil Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

"Whether the termination of services of Shri Ashok Kumar s/o Shri Pasinda Ram, r/o V.P.O. Boda, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. March, 2002 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till

conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from March, 2002 to March, 2020. The petitioner was never engaged in December, March, 2002. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that no show cause notice was issued to the petitioner as he was engaged on a contractual and temporary basis. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous

service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? ..*OPP*.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable, as alleged? ..*OPR*.

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR*.

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR*.

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Ashok Kumar in order to prove his case has produced on record his

affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated that his salary was entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office order which was addressed to the petitioner the copy of the same was received by their office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by their office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Ashok Kumar has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 2002 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

> "HP68-9585, HP68-1756, HP68-0686, HP68-1718, HP68-9995, HP68-0108, HP68-1445, HP68-1715, HP68-3635 and HP68-3735".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that no payment was made in his account till date and wages were not paid on monthly basis. The petitioner has also denied that his EPF was deducted. Similarly petitioner has also asserted that he was paid Rs.82/- per day but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of*

appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Ashok Kumar (petitioner) has stated that he was paid Rs.82 per day. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of

workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2002 to 2020 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-cum-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-cum-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1998. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

"10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/A along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notice has been duly served to the petitioner as the registered letters were not received back. PW4 Shri Ashok Kumar has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice/office order was received, the notice itself described that management will regain the services of its employees contacted with Industrial Dispute. RW4 Shri Pawan Kumar has admitted that no disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential

benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-cum-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Reference No. : 97/2021

Date of Institution : 16-9-2021

Date of Decision : 26-11-2025

Shri Gopal Krishan s/o Shri Amar Singh, r/o Village Kot Kwala, P.O. Jamanabad, Tehsil & District Kangra, H.P. ..*Petitioner*.

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner.

"Whether the termination of services of Shri Gopal Krishan s/o Shri Amar Singh, r/o Village Kot Kwala, P.O. Jamnabad, Tehsil & District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. December, 1998 as Conductor and continuously worked in the said capacity uptil March, 2020. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. March, 2020 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time of terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding

his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-cum-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shri. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics, foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. March, 2020. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is

asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from December, 1998 to March, 2020. The petitioner was never engaged in December, 1998. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that show cause notice was issued to the petitioner on 1.1.2021 for not submitted requisite documents and he did not resume or join the part-time contractual work as and when called by the respondent. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting March, 2020 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during March, 2020 by the respondent is/was illegal and unjustified, as alleged? ..*OPP*.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP*.

3. Whether the claim petition is not maintainable, as alleged? ..*OPR*.

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR*.

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? . .*OPR*.

6. Relief.

6. The petitioner in order to prove his case has has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EPF District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW1/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary, learned Advocate with the department and inquiry was conducted in this complaint and the complaint was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala has examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Gopal Krishan in order to prove his case has produced on record his affidavit PW-4 wherein he has reiterated the facts as stated in the claim petition. Petitioner has also examined Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus Service, Nagrota Bagwan, District Kangra as PW5 who has stated that he cannot show his appointment letter but he can produce on the next date of hearing. He stated that he is drawing the salary of Rs.10,000/- per month. He stated thta his salary has entered in the cashbook of employer every month. He further stated that the record of mandays chart is not produced and since the record was destroyed by termite and vide DD entry the information given to the police and the DD entry is Ext. PW5/A. He stated that he brought seniority list of drivers Ext. PW5/B and conductors Ext. PW5/C who are working with the respondent since 2021 onwards. He stated that he brought EPF record of New Prem Bus Service as Ext. PW5/D. He stated that the petitioner was not employee of the respondent as such no EPF was deducted with respect of the petitioner. He further stated that no appointment letter was ever issued to the petitioner by the respondent.

7. Respondent on the other hand has examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW1 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW1/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal. Respondent has examined Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW2 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW2/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW3 who has stated that the office

order which was addressed to the petitioner the copy of the same was received by our office as Ext. RW3/A. He stated that a show cause notice dated 1.1.2021 addressed to the petitioner was also received by our office which is Ext. RW3/B. Respondent has examined RW4 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW4/A wherein he has reiterated the facts as stated in the reply. He has also produced on record postal receipts Ext. RW4/B and Ext. RW1/C.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Petitioner Gopal Krishan has asserted in his affidavit that he was appointed as a conductor by the respondent in the year 1998 without any appointment letter or terms of employment. He continuously worked till March, 2020 and worked as conductor in the following buses belonging to respondent.

> "HP39A-4665, HP39A-4965, HP39A-4735, HP39-5515, HP68-9995, HP 68-1745, HP68-1746, HP68-2425, HP68-1945, HP68-0685, HP68-0111, HP 68-0224 and HP68-0122".

11. In March, 2020 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW4 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapt Ext. PW5/A is produced on record by PW5 Shri Deeraj Sharma, Legal Advisor-cum-Dealing Hand of New Prem Bus service. PW5 Shri Dheeraj Sharma has deposed that mandays chart of petitioner cannot be produced as the record till date 2020 has

been destroyed by termite. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-cum-Conciliation Officer and respondent had agreed to engaged the petitioner on similar post i.e. conductor, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.82/- per day and total salary of Rs.2460/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual conductor and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW4 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW4 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Gopal Krishan (petitioner) has stated that he was paid Rs.82 per day and total payment of Rs.2460/- as salary. A

specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW5 Shri Dheeraj Sharma has admitted that payment of a working day was made on said working day and PW4 Gopal Krishan has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW4 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or
(ii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. PW5 Shri Dheeraj Sharma, Legal Advisor-cum-Dealing Hand of respondent and RW4 Shri Pawan Kumar employer have admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the*

purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."

16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:- "……..25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review

of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 1998 to 2022 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. PW5/A. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. PW5 Shri Dheeraj Sharma could not produce list of record which has been destroyed by termite and DD entry Ext. PW5/A also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. PW5 Shri Dheeraj Sharma has admitted that Shri Lokesh Kumar is still working with the respondent. There is no medical record produced to prove that this witness was unable to appear and depose in the court qua the record which has been destroyed. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-*cum*-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW4 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-*cum*-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 1998. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:-

"10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW4 Shri Pawan Kumar has admitted that vide Ext. PW3/D he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW3/B along-with receipt Ext. RW4/B. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Gopal Krishan has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice/office order was received, the notice itself described the consequence of not joining "necessary action shall be taken as per HP Model Standing Order Act". RW4 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. Admittedly the termination as per reference was during 'corona pandemic'. There is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW4 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-*cum*-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 26th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 41/2021

Date of Institution : 12-3-2021

Date of Decision : 27-11-2025

Shri Vikram Singh s/o Shri Shakti Singh, r/o VPO Tripal, Tehsil Dehra, District Kangra, H.P. ..*Petitioner.*

Versus

The Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR

: Sh. Vijay Kaundal, Ld. Adv.

: Sh. Rajat Chaudhary, Ld. Adv.

For Respondent : Sh. Rahul Gupta, Ld. Adv.

: Sh. Adhar Gupta, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

"Whether the termination of services of Shri Vikram Singh s/o Shri Shakti Singh, r/o V.P.O. Tripal, Tehsil Dehra, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during October, 2017 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that the services of the petitioner were engaged by the respondent w.e.f. July, 2006 as Driver and continuously worked in the said capacity uptil October, 2017. During his entire service tenure with the respondent he (petitioner) performed his duties with upmost satisfaction of the respondent and never given any chance for complaint in any negligence in duty. Rather his work and conduct was appreciated by the respondent and no show cause notice was ever issued to the petitioner by the respondent. It is asserted that the petitioner had performed his duties in bus in accordance with the respondent in different stations and routes as sanctioned by the transport authorities of State of Himachal Pradesh. The strength of employees of various categories like as driver, conductor, mechanic, foreman and other clerical/administrative staff etc. under the respondent was more than 250 however the Certified Standing Order Act, 1946 is applicable to the respondent. The petitioner was office bearer/member of Brijeshwari Drivers/Conductors Society Kangra. The above society raised various demands to be fulfilled by the respondent however instead of fulfilling the demands the respondent told the petitioner to leave the union/society and sign some blank papers if he wants to continue his employment with the respondent. The petitioner refused to do the same and due to this reason the services of the petitioner were verbally terminated by the respondent w.e.f. October, 2017 without complying with the mandatory provisions of the Industrial Disputes Act, 1947. At the time terminating the services of the petitioner the principle of 'last come first go' was not followed by the respondent and person junior to him were retained in service as well as fresh hand was employed in his place without affording an opportunity of re-employment to the petitioner was the clear violation of Section 25 Clauses G and H of the Industrial Disputes Act, 1947. Neither one month's notice and notice pay in lieu of notice period was paid to the petitioner nor retrenchment compensation was given to him as well as no information was ever given to the petitioner regarding his termination of services which was clear violation of Section 25 Clause F (a) and (b) of the Industrial Disputes Act, 1947. It is asserted that the petitioner had completed more than 240 days in each and every calendar year and in the last 12 calendar months from the date of his termination. The petitioner had filed demand notice dated 4.9.2020 under Section 2-A read with Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 against the respondent and copy of the same was forwarded to Labour-*cum*-Conciliation Officer, Dharamshala for necessary action praying for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits. Upon receipt of demand notice of petitioner as well as other counterpart namely S/Sh. Abhishek Dohru, Surinder Kumar, Gulshan Walia, Raj Kumar, Gopal Krishan, Karam Chand, Sanjay Kumar, Santosh Kumar, Chuni Lal, Jagdeep Chand, Ashok Kumar, Sourabh Sharma, Soni Kumar, Sunil Kumar, Rakesh Kumar, Surinder Kumar, Rakesh Kumar, Yash Paul Sharma, Sanjay Kumar, Karnail Singh, Raj Kumar, Chain Singh, Kuldeep Singh, Vipan Kumar, Suresh Kumar, Jai Dev, Raj Kumar, Vijay Kumar, Jai Dev, Madan Lal, Jaswant Singh, Vikram Singh, Pritam Singh and Amit Rana had forwarded by Labour Officer, Dharamshala to Labour Inspector Dharamshala for further necessary ation and the notice dated 17.9.2020 was issued to Shri Pawan Kumar and Shr. Parveen Kumar employer M/s New Prem Bus Services for appearance on 28.9.2020 at 11 A.M. On 28.9.2020 Shri N.L. Kaundal, learned AR of workers along-with Sh. Rajat Choudhary, learned Advocate and Shri Soni Kumar appeared on behalf of workers and Shri Dheeraj Sharma, Ld. Adv. along-with Shri Pawan Kumar and Paras Soni appeared on behalf of respondent. During conciliation Shri Pawan Kumar (Proprietor/Partner), M/s New Prem Bus Service had given statement before lockdown due to covid-19 pandemic w.e.f. 24.3.2020 the working strength of employees in different categories like as drivers, conductors, mechanics,

foreman, inspectors and other office staff were about 250 and they have owned 83 buses and 210 employees permanently discharging duties. It was asserted by Shri Pawan Kumar that after relaxation in lockdown 50 buses were running and the persons who have raised their demands had not joined their services at their owns. During conciliation proceedings Shri Pawan Kumar has stated with regard to reinstatement of the services of the workers w.e.f. 10.10.2020 whose demand notices were pending before the Labour Inspector, Dharamshala. It is asserted that the respondent had not filed any reply to the demand notice of petitioner before the Conciliation Officer till conclusion of conciliation proceedings that means the respondent admitted the facts mentioned in the demand notice by the petitioner on 4.9.2020. It is asserted that the respondent is one of the biggest private bus transporters in Himachal Pradesh having owned 90 to100 buses which are plying in 85 different routes. It is asserted that more than 250 employees of different categories were engaged and some of them were working from last 5 to 25 years with the respondent. The act of the respondent to terminate the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act, 1947 amounts to unfair labour practice as per Section 2(ra) read with Fifth Schedule Clause 4 (a), (f) and 5 (a) of the Industrial Disputes Act,1947. It is alleged while terminating the services of the petitioner the act of respondent was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 however the petitioner be entitled for reinstatement of his service with seniority, continuity in service and full back wages along-with all consequential benefits from the date of his illegal termination i.e. October, 2017. It is asserted that the petitioner is still unemployed and was not gainfully employed anywhere. In view of the above submissions, it is prayed that the termination of the services of petitioner during March, 2020 may kindly be set aside and respondent be directed to reinstate the services of petitioner with full back wages, seniority, continuity in service along-with all consequential service benefits and interest of @ 12% on back wages.

3. In reply to the claim petition preliminary objections qua maintainability, petitioner being not a workman, petitioner approaching the court with clean hands, cause of action etc. were raised. It is asserted that the petitioner was never retrenched by the respondent and he was only a contractual employee who was called by the respondent on requirement basis from time to time on the basis of oral contract and non renewal of contract does not amount to retrenchment. It is asserted that the claim of the petitioner is barred by virtue of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and the petitioner is not entitled to any relief. On merits, it is asserted that the services of the petitioner were engaged on requirement basis from time to time on part-time and contractual basis. He (petitioner) never worked continuously from July, 2006 to October, 2017. The petitioner was never engaged in July, 2006. No appointment letter was ever issued to petitioner. The period of continuous service was not fulfilled by the petitioner as envisaged under Section 25 Clause F of the Industrial Disputes Act, 1947. It is asserted that the petitioner and other contractual workers did not join even after being called by the respondent. It is asserted that Certified Standing Order Act, 1946 is not applicable to the respondent. It is asserted that show cause notice was issued to the petitioner on 31.10.2020 for not submitted requisite documents and he did not resume or join the part-time contractual work as and when called by the respondent. The petitioner was called only on requirement basis on oral contract and was never employed on pay roll by the respondent. Neither the petitioner was a regular/permanent employee of the respondent nor received salary but he was paid only on daily basis when called. It is denied that the petitioner was a member of the society however the alleged society is not a registered society. It is asserted that the respondent had never asked the petitioner to leave any society and was not asked to sign the blank papers. During the pendency of the conciliation the petitioner was called through registered letter dated 13.11.2020 by the respondent for contractual work as he had performed earlier but the petitioner did not join the said work on his own will. Thereafter the respondent informed the Labour Officer about the non joining of petitioner as well as other persons vide letter dated 1.12.2020. It is asserted that the petitioner was casual and temporary employee who was called by the respondent on requirement

basis on contract as and when his services were required by the respondent. It is asserted that the services of petitioner were not required for the period starting October, 2017 due to imposition of lockdown on account of Covid-19 as the plying of the buses were stopped/restricted. It is alleged that the termination of the petitioner does not come within the purview of definition of retrenchment as per Section 2(oo) (bb) and question of applicability of the provisions of Section 25-G of the Act does not arise as well as Section 25-H of the Industrial Disputes Act is also not attracted and the petitioner is not entitled to any relief as claimed. It is asserted that the petitioner had not completed 240 days of continuous service in the preceding 12 months before termination or in any calendar year. The non renewal of daily contract was done owned to efflux of time of contract. However, the conciliation proceeding was affected and in pursuant to the conciliation the respondent asked the petitioner to come for contractual work vide registered letter issued by the respondent, but the petitioner did not come to join the service as such the petitioner is estopped by his own act, conduct, acquiescence and silence to file the present petition. It is asserted that despite the willingness and empathy of the respondent to call back the petitioner neither the petitioner join the service nor he fulfilled the required documentation. It is alleged that the petitioner is not entitled for reinstatement with back wages as well as benefits of seniority, continuity or any other consequential benefit. It is alleged that the facts of the demand notice were frivolous and vexatious however the respondent had shown empathy towards the petitioner and other persons. It is clarified that the petitioner was not a permanent employee but he was a contractual part-timer worker who had called on requirement basis only. Other parawise averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the act of termination of services of the petitioner during October, 2017 the respondent is/was illegal and unjustified, as alleged? ..OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ..*OPR*.

4. Whether the petitioner has no cause of action to file the present case, as alleged? ..*OPR.*

5. Whether the petitioner has not come to this Court with clean hands, as alleged. If so, its effect? ..*OPR.*

6. Relief.

6. The petitioner in order to prove his case has examined Shri Manthan Gupta, Senior Tax Assistant, Income Tax Office Dharamshala as PW1 who has produced on record balance sheet of M/s New Prem Bus Service Nagrota Bagwan, District Kangra, H.P. from the year 2015-16 to 2021-22 Ext. PW1/A to Ext. PW1/G. Petitioner has also examined Shri Braham Dass, Enforcement Officer, EFP District Office, Palampur, District Kangra, H.P. as PW2 who has produced on record copy of registration letter of Prem Bus Service Ext. PW2/A, list of employees Ext. PW2/B, complaint Ext. PW2/D and Ext. PW1/E, observation memo Ext. PW2/F, enquiry statements Ext. PW2/G-1 to Ext. PW2/G-15, affidavit of Shri Pawan Kumar Ext. PW2/H, list of drivers and conductors Ext. PW2/J. He stated that a complaint was filed by Shri Rajat Chaudhary,

learned Advocate with the department and inquiry was conducted in this complaint and the complainant was informed of the result vide letter Ext.PW2/K. Shri Naresh Kumar, Labour Inspector Labour Officer Dharamshala was examined by petitioner as PW3 who has produced on record copy of demand notice Ext. PW3/A, conciliation proceedings dated 28.9.2020 Ext. PW3/B, conciliation proceedings dated 29.9.2020 Ext. PW3/C, copy of proceedings dated 5.10.2020 Ext. PW3/D, copies of notices for the appearance of the parties dated 17.9.2020 Ext. PW3/E and Ext. PW3/F. Petitioner Shri Vikram Singh in order to prove his case has produced on record his affidavit Ext. PW4/A wherein he has reiterated the facts as stated in the claim petition.

7. Respondent has examined RW1 Shri Pawan Kumar s/o Prem Chand, authorized representative of M/s New Prem Bus Service by way of affidavit Ext. RW1/A wherein he has reiterated the facts as stated in the reply. He has also produced on record copy of reminder regarding show cause notice Ext. RW1/B, postal receipt Ext. RW1/C, copy of show cause notice Ext. RW1/D, copy of postal receipt Ext. RW1/E and copy of DDR Ext. RW1/F. Respondent has further examined Shri Naresh Kumar, Labour Inspector, Kangra at Dharamshala as RW2 who has stated that the office order which was addressed to the petitioner the copy of the same was received by our office as Ext. RW2/D. He also stated that copy of show cause notice dated 4.12.2020 is Ext. RW2/A. Respondent has examined one Shri Shri Amit Chaudhary, Labour Officer, Kangra at Dharamshala as RW3 who has stated that the respondent has sent a letter dated 1.12.2020 as Ext. RW3/A wherein respondent had informed the office of the Labour Officer that the person's mention therein had not joined the duty. Respondent has further examined Shri Kishori Lal, Sub Post Master Sunehad, Tehsil Nagrota Bagwan as RW4 who has stated that since the record has been weeded out as per guidelines of the postal department copy of which is Ext. RW4/A. He stated that in case registered post/letter is sent and the same is not received back then the same is deemed to be delivered. He stated that registered post/letters is delivered in ordinary course of business within the period of 3 to 5 days within Himachal.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Partly Yes
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Relief.	: Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Petitioner Vikram Singh has asserted in his affidavit that he was appointed as a Driver by the respondent in the year 2006 without any appointment letter or terms of employment. He

continuously worked till October, 2017 and worked as conductor in the following buses belonging to respondent.

> "HP68-3510, HP68-6565, HP68-8510, HP68-6161, HP68-6262, HP68-0122, HP68-8485, HP68-3435,HP68-0127, HP68-0121, HP68-949 and HP68-5252".

11. In October, 2017 he was thrown out of his service as he was member of Brijeshwari Drivers/Conductors Society Kangra who had requested the respondent to accept the various demands of drivers and conductors who were members of the society working with the respondent.

12. Respondent witness Shri Pawan Kumar, RW1 has stated that petitioner was only engaged on the requirement basis from time to time, part-time basis and contractual basis. He asserts that petitioner was not a workman, never engaged on long term contract basis nor he was on the rolls of respondent. Thus according to respondent there was no relationship of employer and employee between the respondent and petitioner. It is also asserted that no appointment letter was issued to the petitioner since he was never engaged on regular contract basis. He was only engaged on day contract or on requirement basis. The record pertaining to the petitioner had been destroyed and matter was reported to police. The rapat Ext. RW1/F is produced on record by RW1 Shri Pawan Kumar. RW1 Shri Pawan Kumar has deposed that previous record cannot be produced as the record has been destroyed. Pertinent to mention that this fact does not find mention in pleading on behalf of respondent. Learned counsel for the respondent has submitted that matter was compromised before the Labour-*cum*-Conciliation Officer and respondent had agreed to engage the petitioner on similar post i.e. driver, part-time casual basis but the petitioner had not returned to work as per notice dated 13.11.2020. Petitioner has admitted that he has not produced saving pass book whereby he received payment from respondent. The petitioner has also denied that his EPF was not deducted but he failed to produce any record to support his contention. Similarly petitioner has also asserted that he was paid Rs.92/- per day and total salary of Rs.2760/- per month but no such record of payment is produced by the petitioner. Learned counsel for the respondent has submitted that the petitioner was merely a part-time, casual driver and never completed 240 days of service. Except oral statement of petitioner that there is no basis for concluding that he was completed 240 days of continuous work in any calendar year. Learned counsel has emphasized that onus to prove the 240 days of continuous service of the petitioner with the respondent is primarily on the petitioner who asserts this fact. Learned counsel has further emphasized that this court cannot presume the status of petitioner under Section 25 Clause F of the Industrial Disputes Act, 1947 without any cogent proof led by petitioner regarding his completion of 240 days of service with the respondent. Hon'ble Supreme Court in **R.M. Yellatti vs. The Asst. Executive Engineer, 2006 1 SCC 106** has held as under:—

> *"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not*

suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

13. Going by the above ratio laid down by the Hon'ble Supreme Court it is clear that initial burden to prove that the workman had worked for 240 days in a given year is on the workman. Relevant evidence would be appointment letter, salary receipt, bank statement or oral evidence of co-workers etc. RW1 Shri Pawan Kumar has admitted that when drivers and conductors were appointed no appointment letter was given and he also asserted that respondent does not give appointment letter to anyone. He also admitted that no such document was issued to the petitioner which would show that petitioner was called for work on requirement basis and on which dates. It is important to mention here that RW1 Shri Pawan Kumar has not denied that petitioner has worked with the respondent at any point of interval. PW4 Shri Vikram Singh (petitioner) has stated that he was paid Rs.92 per day and total payment of Rs.2760/- as salary. A specific suggestion is made to him that he was paid wages only. It is not the contention of the respondent that they were paying the petitioner through his bank account which would in this case make bank statement of petitioner a relevant proof regarding the receipt of payment made by the respondent. PW4 Vikram Singh has denied a suggestion that respondent prepared voucher on day to day basis. This voucher is an internal document and respondent had not asserted that any receipt was taken from workman. RW1 Shri Pawan Kumar has admitted that respondent maintained attendance register and payment register of its employees. He admits that EPF is applicable to respondent where 20 or more employees are employed. He has admitted that EPF is applicable to respondent. The contention of petitioner that respondent is operating 80 buses is not controverted in his cross-examination. On the one hand Shri Pawan Kumar s/o Shri Prem Chand sworn an affidavit Ext. PW2/H in the proceedings qua EPF of petitioner stating that petitioner is not his employee. On the other hand he has admitted in his cross-examination that whenever need arose petitioner was called for work. The definition of workman under the Industrial Disputes Act, 1947 is given under Section 2(s) as follows:—

"["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- [Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or
(iii) who is employed mainly in a managerial or administrative capacity, or
(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

14. It appears from the above definition of workman under Industrial Disputes Act does not specifically distinguish between the part-time, casual or temporary workman as compared to a permanent workman.

15. RW1 Shri Pawan Kumar employer has admitted that they participated in conciliation proceedings and they had agreed to reinstate the petitioner. Letter in this regard was issued to the petitioner to join but he did not return back. It appears from the above evidence that respondent had taken dual stand qua status of petitioner being his employee/workman before different authorities for unexplained reason. Though he has clearly admitted that the petitioner had worked with respondent from time to time but no record of petitioner's employment has been produced on behalf of the respondent. Hon'ble High Court of Calcutta in **Hooghly Infrastructure Pvt. Ltd. vs. Sk. Alam Ismail & Ors. as WPA28770 of 2024** has held in paras 15,16 and 17 as follows:—

> ***"15. Section 25D of the Industrial Disputes Act, lays down:- "25D. Duty of an employer to maintain muster rolls of workmen.-*** *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*
>
> ***16. In Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022****, the Supreme Court held:- "…….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however 9 not this Tribunal cannot ignore the fact that UC has filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*
>
> *"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. It is worthwhile to mention here that Section 25 D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. This Tribunal has to keep in mind a vital*

fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference 10 against the management." 23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:—

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary 11 appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……"

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for 37 years in permanent posts and has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))

16. Learned Counsel for the petitioner has pointed out that an application under Section 11 Clause 3 of the Industrial Disputes Act, 1947 was filed on behalf of petitioner seeking the respondent to produce the mandays chart of petitioner, attendance register from the year 2006 to 2017 and other documents relating to employment of petitioner mentioned in the application. Respondent had claimed in the deposition that record of mandays chart and all register were destroyed by termite regarding which information was made to police vide DD entry Ext. Ext.

RW1/F. Apposite to mention that there is no specific pleading on behalf of respondent to this effect. RW1 Shri Pawan Kumar could not produce list of record which has been destroyed by termite and DD entry Ext.RW1/F also does not mention what record and for which time period was destroyed by termite. Neither the informant Shri Surinder Kumar as mentioned in the DD entry nor proprietor Shri Pawan Kumar, nor the incharge of record Lokesh Kumar had specifically stated particulars of record destroyed. The dealing hand/incharge Lokesh has not been examined in the court. Surprisingly the rapat is dated 3.11.2020 and demand notice Ext. PW3/A is dated 4.9.2020. The notice from Labour-*cum*-Conciliation Officer is Ext. PW3/C sent to the office of respondent dated 17.9.2020. Conciliatory process continued from 20.9.2020 to 5.9.2020 Ext. PW3/B. The above facts unfolding from the oral and documentary evidence clearly suggest that the DD entry qua destruction of record was subsequent in time to conciliation between the parties.

17. As held by Hon'ble Supreme Court the fact of case would determine option to be exercised by Labour Court to draw an adverse inference under Section 106 of Indian Evidence Act, 1872 implying that petitioner had infact worked for requisite period under Section 25-B of Industrial Disputes Act, 1947.

18. In the present case the following facts are revealed from the evidence on record that (i) the petitioner was employed by respondent at different interval of time (ii) RW1 Shri Pawan Kumar admitted that no such document was issued to the petitioner to show his employment with the respondent. (iii) Record pertaining to employment i.e. muster roll, attendance register and wage register etc. were not produced. (iv) The record was allegedly destroyed but no particulars of destroyed record has been produced and destruction of the record was reported after the dispute was arose. No efforts appear to have been taken by the respondent to reconstruct the record and no photographs of the destroyed record have been produced. (v) There are contradiction in the affidavit sworn by the respondent qua status of petitioner before the proceeding under EPFO and the proceeding before this court as well as stand before Labour-*cum*-Conciliation Officer. (vi) The petitioner has asserted that he was employed continuously by the respondent for 240 days since the year 2015. (vii) petitioner was not possessing any document to prove the number of days for which he has worked with the respondent though the fact that the petitioner had worked with the respondent at different intervals is not disputed. (viii) The petitioner was issued notice to join his duties by the respondent. (ix) Conciliatory process shows that respondent had agreed to provide continuous service to the petitioner thereafter. (x) The documents sought by petitioner from the custody of respondent including mandatory record under Section 25-D of Industrial Disputes Act, 1947 is not produced on pretext that it was destroyed by termite.

19. In the light of above circumstances what better evidence could have been produced by the petitioner to show 240 days of work/continuous employment is unimaginable. Learned counsel for the petitioner has submitted that co-workers of petitioner already working with respondent were not willing to appear before the court and depose in his favour fearing loss of employment. In-fact once the petitioner was not provided any document including appointment letter, wage receipt by the respondent onus would surely shift towards the respondent to prove that petitioner was merely casual temporary, contractual worker who had not worked continuously with the respondent.

20. It is also important to observe that respondent had not disclosed about the destruction of record till the pendency of conciliation proceedings and merely debunked the record in water. There is no evidence of the fact that enquiry or disciplinary action was initiated against the dealing hand responsible for maintaining the record intact. Respondent failed in his duty to safeguard the mandays record pertaining to workman which ultimately impacts the legal right of the workman under different labour laws. In these circumstances the non production of the record by the respondent specifically the muster rolls, attendance records, log book of buses attended by the

petitioner would definitely raise presumption that respondent had not maintained such record and the excuse put forward by them was not bona fide.

21. The continuous stance of respondent that petitioner was casual, temporary workman called on need basis is a clear violation of provisions of Industrial Disputes Act, 1947 as it amount to unfair labour practice under entry No.10 of Vth Schedule which reads as follows:—

> "10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen".

22. The work of driver and conductor is not a part-time job. Respondent failed to maintain and preserve the record of attendance and payment of petitioner also points towards a deliberate attempt to deprive him of status and privilege of permanent workman.

23. RW1 Shri Pawan Kumar has admitted that he has agreed to provide continuous service to petitioner and he also admitted that he had not called the petitioner in writing. Subsequently he has mentioned about notice Ext. RW1/B and Ext. RW1/D along-with receipts Ext. RW1/C and Ext. RW1/E. Learned counsel for the respondent has vehemently argued that the receipts clearly shows that notices have been duly served to the petitioner as the registered letters were not received back. PW4 Shri Vikram Singh has however denied that he had not joined his service in accordance with the agreement. He has denied that he received any notice. Even if presumed that the notice Ext. RW1/D was received, the notice itself described the consequence of not joining "otherwise action as per labour law is taken against you". RW1 Shri Pawan Kumar has admitted that no such disciplinary proceedings were ever initiated against the petitioner by the respondent. Strangely enough, respondent agreed to provide continuous service and issued show cause notice to the petitioner on the other hand denies that petitioner was an employee of the respondent. Learned AR/Counsel for petitioner has time and again pointed out that respondent has suppressed record of petitioner's employment. The employment of petitioner on day to day basis is not disputed and prior to alleged termination, there is no record to show compliance of Section 25- F (a), (b) and (c) of the Industrial Disputes Act, 1947. In the circumstances discussed above the termination of the services of petitioner was in clear violation of the provisions of Section 25 Clause F (a), (b) and (c) of the Industrial Disputes Act, 1947.

24. It is submitted on behalf of the petitioner that after his termination his juniors were retained in service and new hands were employed by respondent. No specific evidence to this effect has been produced. RW1 Shri Pawan Kumar has admitted that after the conciliation proceedings some of the workmen had been given joining by the respondent however there is no seniority list which would help this court to determine that these persons were junior to the petitioner. Consequently the respondent would be held liable for the violation of the provisions of Section 25 Clause F of the Industrial Disputes Act, 1947 hence issue no.1 is partly decided in the favour of the petitioner.

Issue No.2

25. The petitioner has claimed that his services were illegally terminated. In the claim petition the petitioner has prayed for reinstatement of his service along-with all consequential benefits, seniority and continuity of service, full back wages from the date of his termination. It is clear from evidence on record that the date on which the petitioner was appointed by the respondent does not appear to have been proved by way of evidence. It is also observed while deciding issue no.1 above that respondent has failed in their duty to maintain the relevant record of the petitioner which would have entitled him for benefit in accordance with record. In these circumstances the

petitioner is held entitled for reinstatement with the respondent on daily wage basis. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent. This issue is decided accordingly.

Issues No. 3, 4 and 5

26. The onus of proving these issues was on the respondent. The maintainability of claim was primarily challenged on ground that the petitioner was merely a part-time, casual, temporary workman who was only called on need basis. Nonetheless the workmanship of petitioner has not been denied. Respondent has failed to keep attendance and mandays record of petitioner. Considering the conciliation proceedings before Labour-*cum*-Conciliation Officer and the evidence which has been produced before this court the present claim is maintainable and the petitioner is not estopped by his act and conduct to file the claim petition. Hence issues no. 3, 4 and 5 are decided in the favour of the petitioner and against the respondent.

RELIEF

27. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled for reinstatement with the respondent on daily wage basis forthwith. He (petitioner) is also held entitled to lump sum compensation of Rs.2 lakh to be paid by the respondent within 60 days of publication of award. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 27th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.)

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-CUM-I-NDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 41/2017

Date of Institution : 07-1-2017

Date of Decision : 27-11-2025

Shri Babu Ram s/o Shri Padmu Ram, r/o Village Sanihan, P.O. Dhwal, Tehsil Sunder Nagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. ..*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Narender Kumar, Ld. Adv.

For Respondent : Sh. Anil Guleria, Ld. ADA

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether alleged termination of the services of Shri Babu Ram s/o Shri Padmu Ram, r/o Village Sanihan, P.O. Dhwal, Tehsil Sunder Nagar, District Mandi, H.P. during year, 1998 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 14-05-2015 after delay of about 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that petitioner had worked as daily wager with the respondent in Kyan Nursery Beat during year 1998, 1999 and completed 240 days of continuous work with the respondent. In September, 1998 in village Sanihan chir logs belonging to the respondent were stolen regarding which a case was registered at Police Station, Sunder Nagar. The criminal case was pending for trial for about 10 years before JMIC Sunder Nagar and the final decision was given on 21.5.2010. According to petitioner he was not involved in any manner in the above mentioned case. He has alleged that at the time of registration of the case his daily wager services were terminated by the respondent on the ground that the matter regarding theft of chir logs was pending before the criminal court. He was assured that once the decision would be given by the criminal court he would be reinstated. The seniority list dated 31.3.2003 described about 386 daily wagers and according to petitioner about 40 workmen are junior to him. He has alleged that he was not allowed to continue in service and accordingly did not become eligible for the purpose of regularization this amounts to violation of the Industrial Disputes Act, 1947 by the respondent. He has specifically alleged that respondent has violated the provisions of Sections 25-B, 25-G, 25-F (a) and 25-F(b) of the Industrial Disputes Act. He has also stated that there is no delay in raising industrial dispute as the matter regarding theft of chir logs was under consideration before the criminal court for 11-12 years and he was being assured by the respondent that after the said decision he would be reinstated. The petitioner has prayed that his termination may be set aside and he may be reinstated along-with all consequential benefits.

3. In reply to the claim petition respondent has raised preliminary objections qua maintainability. On merits, it is asserted that petitioner has never worked as daily wager with respondent department and thus question of completion of 240 days did not arise. It is also asserted that petitioner was not an accused in Police Challan No.478-1/1999 which was decided on 21.5.2010. Respondent has reiterated that petitioner never worked as daily wager with the respondent department and thus question of termination from service does not arise. The seniority list of 386 daily wagers as it stood on 31.3.2003 is not related to the petitioner as he has never worked as daily wager with the department. The respondent department has regularized only those daily wagers who have completed criteria of regularization as per government policy. Respondent has denied that they have committed any violation of the provisions of the Industrial Disputes Act. Other averments made in the petition were denied and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of services of the petitioner by the respondent during year, 1998 was/is illegal and unjustified, as alleged? . .*OPP*.

2. If issue No.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to from the employer/respondent? . .*OPP*.

3. Whether the claim petition is not maintainable?
. .*OPR*.

Relief.

6. The petitioner in order to prove his case has produced his affidavit Ext.PW1/A along-with documents i.e. copy of judgment dated 16.9.2022 Mark-A, postal receipt Ext. PW1/B, copy of application under RTI dated 19.12.2024 Mark-B, copy of reply under RTI Ext. PW1/C and envelop along with postal receipt dated 31.12.2024 Ext. PW1/D.

7. Respondent on the other hand has examined Shri Rakesh Katoch, Deputy Conservator of Forest, Suket Forest Division, Sundernagar who has reiterated the averments mae in the reply by way of his affidavit Ext. RW1/A. He has also produced on record copy of judgment dated 21.5.2010 Ext. RW1/B, copy of statement of Prakash Chand Ext. RW1/C and copy of seniority list dated 31.3.2003 Ext RW1/D.

8. I have heard the learned Counsel for the petitioner as well as learned ADA for respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

10. Both these issues are taken up together for the purpose of adjudication.

11. Petitioner Babu Ram has asserted in his affidavit that he worked as daily wage labourer in Kyan Nursery Beat under Forest Range Kangoo between 1998 to 1999 and completed 240 days of work. In his cross-examination however he has admitted that he has not produced any

appointment letter regarding his appointment with the respondent nor he has produced any record pertaining to his daily wager work with the respondent. He has also admitted that he has not produced any record of his employment with the respondent continuously for 240 days during the years 1998 and 1999. The contention of the petitioner is that he worked as a daily wager with the respondent has denied by RW1 Shri Rakesh Katoch. It is asserted by him that petitioner never worked as daily wager with the respondent and thus question of petitioner's completing 240 days continuous of work at any point of time did not arise. The stand of the respondent clear and consistent to the effect that petitioner was never employed as daily wager with the respondent. It is also asserted that petitioner was not an accused in Police Challan No.478-1/1999 decided on 21.5.2010.

12. The petitioner has however asserted that in the year 1998 forest department lodged an FIR for theft of chir logs and the case was decided on 21.5.2010. He was terminated during initiation of the above mentioned criminal case and he was assured that after the conclusion of trial his services would be reinstated. This statement/pleadings of the petitioner is not supported and corroborated by any other oral or documentary evidence produced on his behalf. In the claim petition no reference has been made in order to connect the petitioner to the criminal case regarding theft of FIR. The judgment produced on the case file Ext. RW1/B also does not disclose whether the petitioner was related to the proceedings as an accused, complainant or witness on behalf of department. As already mentioned respondent has clearly asserted that petitioner was not an accused in the said case. Thus copy of this judgment is of no help to the case of the petitioner in order to presume to any extent that he was working as daily wager with the department at the time of lodging an FIR in Police Station, Sunder Nagar. Learned counsel for the petitioner has submitted that RW1 Shri Rakesh Katoch is unaware about the theft of chir logs during year 1998 in village Sanihan. He is also unaware of record of case which was tried before JMIC Sunder Nagar. Though suggestion has made to this witness that since the record was destroyed he could not say whether petitioner has worked with the department or not. There is no positive evidence oral or documentary produced by petitioner to show that he had worked as daily wager with the respondent at any interval of time. Since the contention of respondent is that the petitioner never worked with the department, mandays chart showing zero mandays of petitioner is of no relevance to the case of petitioner. No other record pertaining to the department or any oral evidence of co-workers or any evidence regarding any payment received by petitioner from concerned department has been produced by him. The onus to prove employer relationship particularly when same is denied by the respondent is on the petitioner. In the present case the petitioner has failed to establish the employee and employer relationship between petitioner and respondent. In these circumstances the allegation of termination of the services of petitioner during year 1998 by the respondent are without any basis being not supported by any oral or documentary evidence. The self serving statement of the petitioner would be no consequence in such case. Since it is not established that petitioner at any point of time was working as daily wager with the respondent the question of his termination does not arise and issues no.1 and 2 are accordingly decided in the favour of the respondent.

Issue No.3

13. The maintainability of the claim petition was primarily challenged on the ground that petitioner had never worked as a daily wager with the respondent at any interval of time. As already mentioned while deciding issue no.1 above there is no oral and documentary evidence to corroborate or to support the averments in the claim petition as well as statement of the petitioner hence the claim filed by the petitioner and the reference are not maintainable, hence this issue is decided in the favour of the respondent.

RELIEF

14. In view of my discussion on the issues no. 1 to 3, the claim made on behalf of the petitioner is not maintainable and the same is dismissed. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 27th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (Camp at Una).**

Reference No. : 76/2023

Date of Institution : 23-11-2021

Date of Decision : 29-11-2025

Shri Rohit Sharma s/o Sh. Purshotam Chand, r/o Village &P.O.Badhera, Tehsil Haroli, District Una, H.P. ..*Petitioner.*

Versus

1. The Managing Director, m/s Stanford, Laboratories Pvt. Ltd. Industrial Area Mehatpur (HP)-174315.

2. The Vice President, m/s Stanford, Laboratories Pvt. Ltd. Industrial Area Mehatpur (HP)-174315.

3. Assistant General Manager, H.R., M/S Stanford Laboratories Pvt. Ltd, Industrial area Mehatpur, District Una, H.P. ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For Respondent(s) : Sh. Rajiv Kumar Sharma, Ld. Adv.

AWARD

This is a claim petition under Section 2-A of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of pendency of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the services of the petitioner have been appointed by the Appointing Authority of the company by the Managing Director w.e.f. 16.04.2019 in the capacity of Executive Production vide appointment letter No. SLPL/04-05/992 dated 4th May, 2019 and had continued worked in the said capacity in the Production Department as on 31.03.2021 under the control and supervision of the Manager Production and Assistant Manager Production of the company. During his services in the company the work and conduct of the petitioner was fully satisfactory up to the mark and he had not given any chance to the management of the company against his alleged misconduct and the company has never given him any show cause notice in his any alleged misconduct till 31.03.2021 and the past record of the petitioner was neat and clean. It is asserted that w.e.f. 01.04.2021 as per the performance appraisal letter the pay structure of the petitioner have been changed by the authorized signatory Sh. Harish Kumar, Manager (HR) and Administration vide his letter dated 01.04.2021. It is submitted that the petitioner has received the termination letter from the company which is duly signed by authorized signatory i.e. Sh. Harish Kumar Manager (HR &Admn.) non-appointing authority vide letter No. SLPL/MHT-UNA/HR/JULY/2021-22/WARN-LTR-00337 dated 15-07-2021 in the presence of vice President of the company regarding his termination from services. In the termination letter dated 15.07.2021 the management has made the alleged wrong/illegal allegation/charges against the petitioner that the criminal case is under Section 107/150 CRPC is pending before the Ld. SDM Court Una. It is asserted that as per company law/rules and regulations no employees can work in the organization of the company against whom criminal case is going on the again made false allegation in the termination letter. It is submitted that the allegation made by the company in the termination order dated 15.07.2021 and before termination the services of the petitioner the company has not served him any show cause notice and charge sheet against his alleged misconduct even no enquiry had been conducted against him as per the Certified Standing Order Act, 1946 of the company which is applicable to the company and company has violated the principle of nature justice. It is submitted that the during his services in the company the applicant was working under the control and supervision of Production Manager/Assistant Production Manager and reporting every day to them but the petitioner has not received any show cause from his head of the department regarding his alleged misconduct. The allegation made by the company in his termination letter can be proved by way of domestic enquiry held against the petitioner but without conducting the enquiry as per the standing order the company cannot terminated any employee. It is categorically submitted that before terminating the services of the petitioner he has completed more than 240 days in each and every calendar year from the date of initial engagement and his termination is duly covered under the definition of continuous services under Section 25-B of the Industrial Disputes Act, 1947. It is further submitted that at the time of his unlawful termination dated 15.07.2021 the person junior to him retained in service namely AbinavDubey (2020) and Akhil (2020). It is alleged that at the time of his illegal termination the petitioner was getting Rs. 14,452/- per month. After termination the services of the petitioner the company has appointed Sh. NitishKalia in the same capacity as Executive in Production Department. It is alleged that the management has deliberately changed the service condition of the petitioner. It is submitted that the act of the terminating authority of the company is unfair labour practice to terminate the services of the petitioner dated 15.07.2021 is highly unjustified, arbitrary, unconstitutional and against the mandatory provision of the Industrial Disputes Act, 1947 as well as H.P. Industrial Standing Order Act, 1946 Rules 1947. In view of the above it is prayed he may be reinstated with full back wages and other benefits till the date of reinstatement.

3. In reply to the claim petition on behalf of respondents preliminary objections qua maintainability and suppression of material factshave been raised. On merits, it is asserted that the petitioner was working in the capacity of supervisor / executive and was delivering the duties whichwere purely supervisory in nature. It is asserted that during the course of his employment, two employees namely Mr.GauravShishodia&Mr.PushpendraChauhan had made complaintagainst the petitioner that he along-with Mr.Gagandeep tried to kill them. Mr.PushpendraChauhan had lodged the complaint to the Superintendent of Police, Una against the petitioner. It is submitted that the promotions are given by the management after considering the work and behaviour of the petitioner. Even then on dated 01.04.2021 the management increased the salary of the petitioner from CTC Rs.1,80,384/- per annum to CTC Rs.2,08,260/- per annum. It is submitted that the duties assigned to the petitioner were purely supervisory in nature and the petitioner was working in supervisory capacity and was supervising the work of the subordinates who were working under the petitioner in the factory, so the provisions of Industrial Dispute Act 1947 does not apply in present case. It is asserted that the termination of services of the petitioner on 15.07.2021 had taken place as per law, so retaining of other executives Mr.AbhinavDubey and Mr.Akhil who were junior to the petitioner has no relevance. Even appointment of Sh. NitishKalia has nothing to do with termination of the petitioner. The services of the petitioner stands terminated as per letter of appointment and the Industrial Employment (Standing Orders) Act, 1946 are not applicable to the present case of the petitioner. Other averments parawise made in the petition were denied and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the petitioner was appointed as Executive Production by the respondents *w.e.f.* 16.04.2019 as claimed? ...*OPP.*

2. Whether the services of the petitioner have been illegally terminated by the respondents as alleged? ...*OPP.*

3. Whether the claim petition is not maintainable, as alleged? ...*OPR.*

4. Relief.

6. I have heard the learned counsel for respondents at length and records perused.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Relief.	: Claim Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

8. All the issues shall be taken up together for the purpose of adjudication.

9. The petitioner in the present case failed to appear before this court. Despite due knowledge of the proceedings he did not put his presence nor any Counsel appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

10. It is argued by learned counsel for respondentsthat the onus of proving the averments and allegations by way of leading oral or documentary evidence in the court is on the claimant/petitioner. The learned counsel for respondentshas further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of leading evidence the reference cannot be decided in favour of the claimant.

11. The perusal of the case file shows that ample opportunities has been granted topetitioner to produce evidence oral as well as documentary. He failed to produce evidence and despite having knowledge of the date fixed for hearing no one appeared on behalf of the petitioner. This was last opportunity for evidence of the petitioner. No witness has appeared neither petitioner appeared in the Court today. Hence evidence of the petitioner is closed by the order of Court. The onus of proving the fact that termination of the services of the petitioner by the respondentsw.e.f. 16.04.2019was illegal and unjustified was on the petitioner. In absence of cogent evidence to this effect the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

> "22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

12. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand, AIR 2018 SC 2670** has observed thus under the statutory scheme the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex parte and pass an ex parte award. The award, ex parte or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

13. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to adduce evidence to substantiate allegations.

RELIEF

14. In view of the above, the reference/claim petitionis not maintainable and is accordingly dismissed. The parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of November, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal ,*
Kangra at Dharamshala, (H.P.).

MUNICIPAL CORPORATION MANDI (H.P)
email: mcorp.mandi@gmail.com

NOTIFICATION

Dated, the 30th March,2026

No. MC/MND/Bye-Laws 2026–3109.—Whereas, the Municipal Corporation Mandi has notified the Door to Door Garbage Collection & Disposal Bye-laws, 2022 in exercise of the powers conferred under Section 395 of the Himachal Pradesh Municipal Corporation Act, 1994;

And whereas, the Municipal Corporation Mandi, in its General House Meeting held on 28-11-2025 *vide* Resolution No. 19, has approved the revision/amendment in the user charges specified in Annexure-A: of said Bye –Laws.

Now, therefore, in exercise of the powers conferred under Section 395 of the Himachal Pradesh Municipal Corporation Act, 1994, the Municipal Corporation Mandi hereby publish the draft amendment of Annexure-A for the information of the public at large. Any person having any objection or suggestion is hereby called upon to submit the same in writing to undersigned within 30(thrity) days from the date of draft publication.

All other provisions of the Door to Door Garbage Collection & Disposal Bye-laws, 2022 shall remain unchanged and in force.

1. Short title and commencement.—These Bye-Laws may be called the Municipal Corporation Mandi (Door to Door Garbage Collection & Disposal)Amendment Bye –Laws.

2. Annexure 'A' shall be amended as under:—

Sl. No	Category of User	User Changes Monthly basis (INR)
1.	Household	75
2.	Commercial Complex (Dhabba, coffee, provisional)	300
3.	Pan Shop	150
4.	Tea Shop	150
5.	Shops (Daily needs, cloths)	150
6.	Vegetables & fruits shops (Wholesale)	2000
7.	Vegetables & fruits shops (Retail)	300
8.	Sweet/snacks shop (Big)	300
9.	Sub Division Office & Local Office	1000
10.	District Level Office	2000
11.	Divisional Level Office	2000
12.	Zonal Level Office	2000
13.	Offices (more than 20 rooms)	2500
14.	Bank /PSU	2000
15.	Govt. Schools	250
16.	Private Schools (≤100 students)	1000
17.	Private Schools (>100 students)	2000
18.	Bakeries (small)	500
19.	Bakeries (manufacturing units)	2000
20.	PG Hostel/Guest House (upto 20 rooms)	2500
21.	PG Hostel/Guest House (21–30 rooms)	3000
22.	PG Hostel/Guest House (>30 rooms)	5000
23.	Mandi	2500
24.	Factories (Manufacturing unit)	2000
25.	Workshop (Tyre puncture shop)	400
26.	Workshop (repair shop)	400
27.	Workshop (repair + spare parts shop)	1000
28.	Workshop (vehicle showroom, repair + spare parts).	2000
29.	Workshop (those not touching any NH or SH)	1200
30.	Restaurants	2000
31.	Restaurants + Bar	2,500
32.	Cinema Hall (Theatre, multiplex)	2,500
33.	Govt. College	2,500
34.	Private College	2500
35.	Training institute/Coaching centre	1500
36.	Hospital/Nursing Home (upto 50 beds) * (excl. BMW).	2,500
37.	Hospital/Nursing Home (51–100 beds) * (excl. BMW)	4500
38.	Hospital / Nursing Home (>100 beds) — **Base**	6,000
39.	Additional bed (per extra bed)	500
40.	Clinics *(excl. BMW)*	400
41.	Clinics with medicines shops *(excl. BMW)*	400
42.	Chemist shop *(excl. BMW)*	400
43.	Laboratory *(excl. BMW)*	400
44.	Banquet Hall/ Hotel — **Per trip on demand**	2500

45.	Special Hotels (>50 Rooms) — Flat charge	25000
46.	Special Hotels — Per trip on demand	2500
47.	Vehicle on demand for Dumper — Per trip	3,000
48.	Big Malls — Per floor	3,000
49.	Meat Shops (non-subscribed chicken vehicle)	500
50.	Confectionary + Veg Shop	500
51.	Scrap Dealers	2000
52.	Street Vendor	150
53.	Cow Dung collection from households	500
54.	**Events/Public meetings/Religious gatherings (per event).**	
	Gathering upto 100	1000
	100 to 500	2100
	500 to 2000	3000
	Above 2000	5000
	Capacity > 10,000 — per event per day	25000

By order,

Commissioner,
Municipal Corporation, Mandi.

कृषि विभाग

अधिसूचना

दिनांक 31 मार्च, 2026

संख्याः Agr-B-F(10)-7/2018-L-1.—इस विभाग की समसंख्यक अधिसूचना दिनांक 2 फरवरी, 2026 के क्रम को जारी रखते हुए हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश राज्य विपणन बोर्ड के अध्यक्ष को निम्नलिखित सुविधायें एवं शर्तें प्रदान करने के सहर्ष आदेश देते हैंः–

1. अध्यक्ष को प्रवास पर राज्य के भीतर दैनिक भत्ता मु0 250 / रुपये प्रतिदिन तथा राज्य के बाहर (केवल श्रेणी–A शहरों में) दैनिक भत्ता मु0 400 / – रुपये प्रतिदिन की दर से देय होगा।

2. बोर्ड के आवास की उपलब्धता की स्थिति में अध्यक्ष को अर्ध–सुसज्जित आवास उपलब्ध करवाया जायेगा, जिसके लिए उन्हें सरकार की दरों के अनुसार से किराया अदा करना होगा। बोर्ड का आवास उपलब्ध न होने की स्थिति में उन्हें मु0 25,000 / –रुपये प्रतिमास की दर से मकान किराया भत्ता देय होगा। यदि उनकी सेवायें समाप्त की जाती है या सरकार को उनकी सेवाओं की और आगे आवश्यकता न हो तो उन्हें उपलब्ध करवाई गई बोर्ड की रिहायशी

आवास सुविधा, सेवा समाप्ति आदेशों की 15 दिनों के अन्दर खाली करनी होगी। आवास के बदले किराया भत्ता की अदायगी की स्थिति में अध्यक्ष को फर्नीचर चार्जिज देय नहीं होंगे।

3. आवास में बिजली और पानी के वास्तविक खर्चे का वहन पूर्व की भान्ति सम्बन्धित बोर्ड द्वारा किया जायेगा।

4. अध्यक्ष को वाहन की सुविधा उपलब्ध करवाई जायेगी, जिसका खर्च सम्बन्धित बोर्ड द्वारा वहन किया जायेगा या इसके बदले में उन्हें मु0 2500 / – रुपये प्रतिमास की दर से वाहन भत्ता प्रदान किया जायेगा। यदि बोर्ड के पास वाहन उपलब्ध नहीं है तो बोर्ड कोई नया वाहन क्रय नहीं करेगा और न ही चालक के पद का सृजन करेगा। इस स्थिति में यदि बोर्ड के पास वाहन उपलब्ध न हो तो वह अध्यक्ष को टैक्सी की सुविधा उपलब्ध करवायेगा।

5. अध्यक्ष को मु0 3500 / – रुपये प्रतिमास की दर से आतिथ्य सत्कार भत्ता देय होगा।

6. अध्यक्ष को कार्यालय में सम्बन्धित बोर्ड द्वारा दूरभाष की सुविधा उपलब्ध करवाई जायेगी। आवास के दूरभाष / मोबाइल खर्चे की प्रतिपूर्ति हेतु उन्हें मु0 900 / – की राशि देय होगी।

7. (क) बोर्ड अक्ष्यक्ष उसी निःशुल्क चिकित्सा सुविधा के पात्र होंगे जिसके लिए बोर्ड के प्रबन्ध निदेशक पात्र हैं।

(ख) अध्यक्ष दैनिक यात्रा भत्ता बिलों को प्रतिहस्ताक्षरित करने के लिए सक्षम होंगे तथा प्रवास कार्यक्रम को अनुमोदन के लिए स्वयं ही नियन्त्रण अधिकारी होंगे।

(ग) इनके बिलों का आहरण बोर्ड द्वारा किया जायेगा।

8. अध्यक्ष को मु0 80,000 / – रुपये प्रतिमास की दर से पारिश्रमिक देय होगा।

9. अध्यक्ष को पहाड़ी तथा मैदानी क्षेत्रों में मु 8.00 रुपये (आठ रुपये) प्रति कि0 मी0 की दर से मील भत्ता (रोड़ माईलेज) देय होगा, यदि वे निजी वाहन द्वारा बोर्ड के कार्य से प्रवास पर जाते हैं। उपरोक्त सभी सुविधायें एवं सेवा शर्तें वित्त विभाग के पत्र संख्याः फिन–(सी)(बी)–15–2 / 2005, दिनांक 24–11–2009, 09–08–2012,02–05–2015, 30–05–2016, 20–12–2018 तथा दिनांक 02.07.2025 द्वारा जारी दिशा–निर्देशों के अनुसार की जाती है।

आदेश द्वारा,

सचिव (कृषि)।

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पंचायती राज विभाग

अधिसूचना

शिमला-09, दिनांक 20 फरवरी, 2026

संख्याः पीसीएच-एचए (1)3/2024-6245-50.—इस विभाग की अधिसूचना संख्या पीसीएच-एचए(1)3/2024-5885-90 दिनांक 13-02-2026 के अन्तर्गत, जिला कांगड़ा में ग्राम सभा क्षेत्रों को पुनर्गठित करने हेतु प्रस्तावना द्वारा सम्बन्धित ग्राम सभा सदस्यों से आक्षेप एवं सुझाव आमंत्रित किए गए थे तथा उपायुक्त,जिला कांगड़ा को इस सम्बन्ध में, आक्षेप/सुझाव प्राप्त करने और उन पर विचार करने के उपरान्त अन्तिम सिफारिश प्रस्तुत करने के लिए प्राधिकृत किया गया था;

और क्योंकि उपरोक्त अधिसूचना में निर्दिष्ट अवधि के भीतर प्राप्त आक्षेपों/सुझावों पर उपायुक्त, जिला कांगड़ा द्वारा विचार किया गया तथा विनिश्चय किया गया;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का अधिनियम संख्यांक 4) की धारा 3 की उप–धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला कांगड़ा हिमाचल प्रदेश की ग्राम सभा क्षेत्रों के पुनर्गठन से सम्बन्धित निम्नलिखित अनुसूची में वर्णित ग्राम सभा क्षेत्रों को पुनर्गठित करने के सहर्ष आदेश प्रदान करते हैं।

अनुसूची

क्र० सं०	**ग्राम सभा का नाम जिससे क्षेत्रों/ग्रामों को अपवर्जित किया जाना है**	**कोष्ठ संख्या 2 में वर्णित ग्राम सभा के ग्रामों के नाम**	**कोष्ठ संख्या 2 में वर्णित ग्राम सभा से अपवर्जित किए जाने वाले ग्रामों के नाम**	**ग्राम सभा का नाम जिसमें कोष्ठ संख्या 4 में वर्णित ग्राम को सम्मिलित किया जाना है।**	**कोष्ठ संख्या 5 में वर्णित ग्राम सभा में पुनर्गठन उपरान्त समस्त ग्रामों के नाम विवरण**	**विवरण**
1	2	3	4	5	6	7
1. विकास खण्ड देहरा						
1.	ढलियारा	**1. कोहासन** 2. ढलियारा 3. भरवाड़ा	1. कोहासन	बढहूं	1. उपरला बढहूं 2. बूहला बढहूं **3. कोहासन**	कोष्ठ संख्या 4 में वर्णित ग्राम/ग्रामों को छोड़कर, कोष्ठ संख्या 3 के शेष ग्राम, ग्राम सभा, **"ढलियारा"**में रहेंगे।

आदेश द्वारा,

सचिव (पंचायती राज)।

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पंचायती राज विभाग

अधिसूचना

शिमला–171 009, दिनांक 26 फरवरी, 2026

संख्याः पीसीएच–एचए (1)3 / 2024–6729–23.—इस विभाग की अधिसूचना संख्या पीसीएच–एचए (1)3 / 2024–5996–6002 दिनांक 13–02–2026 के अन्तर्गत जिला शिमला के विकास खण्ड मशोबरा की ग्राम सभा मल्याणा के राजस्व शुराला व शनहान को ग्राम सभा चमियाना में सम्मिलित कर पुनर्गठन सम्बन्धी

प्रस्तावना को, उपायुक्त, जिला शिमला के कार्यालय पत्र संख्याः पीसीएच–एसएमएल–(1) Re-organisation (Panch) 10/2025-1532 दिनांक 21–02–2026 के दृष्टिगत निरस्त करने के आदेश प्रदान करते हैं।

आदेश द्वारा,

सचिव (पंचायती राज)।

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पंचायती राज विभाग

शुद्धिपत्र

शिमला–09, दिनांक 28 फरवरी, 2026

संख्याः पीसीएच–एचए (1)3 / 2024–6916–21.—इस विभाग की अधिसूचना संख्याः पी0सी0एच0 एच0ए0 (1)3 / 2024–6734–39, दिनांक 26–02–2025 के अन्तर्गत क्र0सं0 1 पर अंकित जिला शिमला के विकास खण्ड मशोबरा की ग्राम सभा टिपरा के कोष्ठ संख्या 4 में **"टिपरा"** के स्थान पर **"टिपरा मुख्यावास चूरट नाला"** तथा क्र0सं0 2, ग्राम सभा क्यारकोटी के कोष्ठ संख्या 4 में **"क्यारकोटी"** के स्थान पर **"क्यारकोटी मुख्यावास नेरी"** पढ़ा जाए।

आदेश द्वारा,

सचिव (पंचायती राज)।

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पंचायती राज विभाग

शुद्धिपत्र

शिमला–09, दिनांक 27 फरवरी, 2026

संख्याः पीसीएच–एचए (1)3 / 2024–6760–65.—इस विभाग की अधिसूचना संख्याः पी0सी0एच0 एच0ए0 (1) 3 / 2024–6734–39, दिनांक 26–02–2025 के अन्तर्गत क्र0सं0 2 पर अंकित जिला शिमला के विकास खण्ड मशोबरा की ग्राम सभा बल्देयां के कोष्ठ संख्या 6 में वर्णित क्रम संख्या 15 पर राजस्व ग्राम **"कम्हालटी"** पढ़ा जाए।

आदेश द्वारा,

सचिव (पंचायती राज)।

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CORRECTION OF NAME

I, Khem Raj s/o Sh. Visho, r/o Village Bagdu, P.O. Sirdi, Tehsil Bharmour, Distt. Chamba (H.P.)-176 315 declare that in my daughter's Aadhar Card bearing No. 6165 4750 3621, her name is wrongly entered as Kirna Kumari. Which should be corrected as Kiran Kumari. Please correct this.

KHEM RAJ
s/o Sh. Visho,
r/o Village Bagdu, P.O. Sirdi,
Tehsil Bharmour, Distt. Chamba (H.P.)-176 315.

CORRECTION OF NAME

I, Jyoti Devi d/o Sh. Hari Chand, r/o Village Sunether, P.O. Gagruhi, Sub-Tehsil Bharoli, Tehsil Jawalamukhi, Distt. Kangra (H.P.) declare that in my Aadhar Card, my name is wrongly entered as Ranjna Devi. Which should be corrected as Jyoti Devi. Please correct this.

JYOTI DEVI
d/o Sh. Hari Chand,
r/o Village Sunether, P.O. Gagruhi, Sub-Tehsil Bharoli,
Tehsil Jawalamukhi, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Manisha (New Name), Aadhar Card No. 5070 7892 6012, w/o Sh. Lalit Jaswal, r/o House No. 87/1 Lag 43/14, P.O. Lagmanwin, Distt. Hamirpur (H.P.) declare that I have changed my name from Manisha Jaswal (Old Name) to Manisha (New Name). Concerned authorities may note.

MANISHA
w/o Sh. Lalit Jaswal,
r/o House No. 87/1 Lag 43/14, P.O. Lagmanwin,
Distt. Hamirpur (H.P.).

CORRECTION OF NAME

I, Pooja Bharti w/o Sh. Yogesh Kumar, r/o Village Kund, P.O. Bhararighat, Tehsil Arki, Distt. Solan (H.P.) declare that in my Aadhar Card, my name has been wrongly entered as Pooja Soni instead of Pooja Bharti. This may please be corrected to Pooja Bharti. Concerned authorities may note.

POOJA BHARTI
w/o Sh. Yogesh Kumar,
r/o Village Kund, P.O. Bhararighat,
Tehsil Arki, Distt. Solan (H.P.).

CHANGE OF NAME

I, Bhima s/o Sh. Tilak Raj, r/o Village Padshal, Darkoti (99), Shimla (H.P.) hereby declare that I have changed my minor son's name from Akship (Old Name) to Akshit (New Name) as recorded in his Aadhar Card. All concerned please take note.

BHIMA
s/o Sh. Tilak Raj,
r/o Village Padshal, Darkoti (99),
Shimla (H.P.).

CHANGE OF NAME

I, Mast Ram Verma s/o Late Sh. Jai Ram Verma, r/o Verma Niwas, Lower Vikasnagar, P.O. Kasumpti, Tehsil & Distt. Shimla (H.P.), permanent r/o Village Halotu, P.O. Balghar, Tehsil Theog, Distt. Shimla (H.P.)-171 220 declare that I have changed my name from MR Verma to Mast Ram Verma. All concerned please may note.

MAST RAM VERMA
s/o Late Sh. Jai Ram Verma,
r/o Verma Niwas, Lower Vikasnagar, P.O. Kasumpti,
Tehsil & Distt. Shimla (H.P.),
permanent r/o Village Halotu, P.O. Balghar,
Tehsil Theog, Distt. Shimla (H.P.)-171 220.

CHANGE OF NAME

I, Yashwant Bhagta s/o Sh. Jai Lal, r/o Village Jhagtan, P.O. Jhagtan, Tehsil Jubbal, Distt. Shimla (H.P.)-171 216 declare that Yashwant Singh, Yashwant Singh Bhagata and Yashwant Bhagta pertains to one and the same person *i.e.* myself. That my actual and true name is Yashwant Bhagta. That my name be made/entered/corrected in all my records.

YASHWANT BHAGTA
s/o Sh. Jai Lal,
r/o Village Jhagtan, P.O. Jhagtan,
Tehsil Jubbal, Distt. Shimla (H.P.)-171 216.

CORRECTION OF NAME

I, Trilok Singh s/o Late Sh. Ram Bihari, r/o Ward No. 4, V.P.O. Brua, Tehsil Sangla, Distt. Kinnaur (H.P.)-172 105 declare that in my PAN Card bearing No. CJKPS2835J, my father's name is wrongly entered as Dharam Singh, which should be corrected as Ram Bihari. Please correct this.

TRILOK SINGH
s/o Late Sh. Ram Bihari,
r/o Ward No. 4, V.P.O. Brua,
Tehsil Sangla, Distt. Kinnaur (H.P.)-172 105.

हिमाचल प्रदेश चौदहवीं विधान सभा

अधिसूचना

दिनांक, 2 अप्रैल, 2026

सं0 वि0स0–विधायन–प्रा0 / 1–1 / 2023.––हिमाचल प्रदेश विधान सभा दिनांक 2 अप्रैल, 2026 को सम्पन्न हुई, बैठक की समाप्ति पर अनिश्चित काल के लिए स्थगित हुई।

यशपाल शर्मा,
सचिव,
हि0प्र0 विधान सभा।

HIMACHAL PRADESH FOURTEENTH VIDHAN SABHA

NOTIFICATION

Dated, the 2nd April, 2026

No.V.S.-Legn.-Pri./1-1/2023.—The Himachal Pradesh, Legislative Assembly adjourned Sine-die *w.e.f.* the close of its sitting held on the 2nd April, 2026.

YASH PAUL SHARMA,
Secretary,
H.P. Vidhan Sabha.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट https://rajpatra.hp.gov.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।